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ORIGINAL

GUAM LAND USE COMMISSION REGULAR MEETING MINUTES



Department of Land Management Conference Room
ITC Building, Tamuning



Tuesday, November 29, 2016
1:45 p.m. to 3:30 p.m.

GUAM LAND USE COMMISSION
Regular Meeting
Tuesday, November 29, 2016
Department of Land Management Conference Room
3rd Floor ITC Building, Tamuning

MEMBERS PRESENT:

Mr. John Arroyo, Chairman

Mr. Victor Cruz, Vice Chairman

Ms. Conchita Bathan, Commissioner

Mr. Tae Oh, Commissioner

Mr. Michael Borja, Executive Secretary

Ms. Kristan Finney, Legal Counsel

PLANNING STAFF PRESENT:

Mr. Marvin Aguilar, Guam Chief Planner

Mr. Frank Taitano, Case Planner

Ms. Celine Cruz, Case Planner

Ms. Cristina Gutierrez, Recording Secretary

GUAM LAND USE COMMISSION GUAM SEASHORE PROTECTION COMMISSION Attendance Sheet

Department of Land Management Conference Room
590 S. Marine Corps Drive, Third Floor, ITC Building, Tamuning

Date of Meeting: Thursday, November 29, 2016

Time of Meeting: GLUC: 1:45PM GSPC: 1:40PM

<input checked="" type="checkbox"/>	GLUC
<input checked="" type="checkbox"/>	Regular
<input type="checkbox"/>	Special
<input checked="" type="checkbox"/>	Quorum
<input type="checkbox"/>	Non-Quorum

<input checked="" type="checkbox"/>	GSPC
<input checked="" type="checkbox"/>	Regular
<input type="checkbox"/>	Special
<input checked="" type="checkbox"/>	Quorum
<input type="checkbox"/>	Non-Quorum

COMMISSION MEMBERS

- John Z. Arroyo, Chairman
- Conchita D. Bathan, Commissioner
- Victor F. Cruz, Vice Chairman
- Tae S. Oh, Commissioner
- Vacant, Commissioner
- Vacant, Commissioner

SIGNATURE

[Handwritten signature in blue ink]

- Michael J.B. Borja, Executive Secretary
- Kristan K. Finney, Legal Counsel
- Marvin Q. Aguilar, Chief Planner
- Frank Taitano, Planner IV
- Penmer Gulac, Planner IV
- Celine Cruz, Planner IV
- M. Cristina Gutierrez, WPS II

[Handwritten signature in red ink: MBorja]

[Handwritten signature in blue ink: Kristan K. Finney]

[Handwritten signature in blue ink: Marvin Q. Aguilar]

[Handwritten signature in blue ink: Frank Taitano]

[Handwritten signature in blue ink: Penmer Gulac]

[Handwritten signature in blue ink: Celine Cruz]

[Handwritten signature in blue ink: M. Cristina Gutierrez]

ADJOURNMENT: GLUC: 3:30PM GSPC: 1:42PM

LAND USE COMMISSION REGULAR MEETING MINUTES
Department of Land Management Conference Room, 3rd Floor, ITC Bldg., Tamuning
Tuesday, November 29, 2016 • 1:45 p.m. to 3:30 p.m.

I. Attendance

Chairman Arroyo called to order the regular meeting of the Guam Land Use Commission for Tuesday, November 29, 2016 at 1:45 p.m. noting a quorum.

Present were: Chairman John Arroyo, Vice Chairman Victor Cruz, Commissioner Conchita Bathan, Commissioner Tae Oh, Executive Secretary Michael Borja, Legal Counsel Kristan Finney, Guam Chief Planner Marvin Aguilar, Planning Staff Frank Taitano and Celine Cruz, and Recording Secretary Cristina Gutierrez

Chairman Arroyo on the agenda, are you okay with the order of business on the agenda.

[No objections noted from the Commissioners.]

II. Approval of Minutes

Chairman Arroyo first item is the approval of the October 27, 2016 meeting Minutes. Everyone received a copy of the Minutes. Let's move forward with a motion.

Commissioner Oh I move to approve the Minutes of the regular meeting of Thursday, October 27, 2016 with any revisions to be submitted by close of business today.

Vice Chairman Cruz I second.

Chairman Arroyo moved by Commissioner Tae, seconded by Vice Chair Cruz. Any discussion on the Minutes? [None noted]

All in favor of the motion say "aye" [Chairman Arroyo, Vice Chair Cruz, Commissioners Oh and Bathan], all opposed say "nay."

[Motion to approve passed unanimously; 4 ayes, 0 nay]

III. Old or Unfinished Business [None]

IV. New Business

Zone Change

- A. The Applicant, Our Lady of Peace Memorial Plan, Inc. represented by FC Benavente, Planners; request for a Zone Change from "A" (Rural) to "C" (Commercial) zone to have one uniform zoning for its existing facility located on Lot 5223-1B-2-4NEW, in the Municipality of Barrigada. Application No. 2015-37.
Case Planner: Frank Taitano

Chairman Arroyo Marvin or Frank ---

Commissioner Bathan before we proceed Mr. Chair. This is a zone change so do we need a billboard sign?

Vice Chairman Cruz the sign? I saw the sign.

Chairman Arroyo do we have a picture on that Frank?

Frank Taitano (Case Planner) it's available with the dates and everything, and they did submit a copy.

Marvin Aguilar (Chief Planner) we would like to attest to the fact that the sign is up and with appropriate form and contents and dates.

Commissioner Bathan okay.

Chairman Arroyo Frank or Marvin ---

Marvin Aguilar summarizes the Staff Report to include purpose, facts, chronological history, public hearing, staff analysis/discussion, and recommendation. [For full content/context, refer to the attached report.]

Chief Planner Aguilar added that the application was submitted in 2015, and that the reason for the lapse in time was due to the lack of an Agriculture Impact Statement, which was received recently and is included in the Commissioner's application packet for their reference.

[Attachment A – Staff Report dated November 14, 2016]

Chairman Arroyo any questions?

Vice Chairman Cruz on the layout there (referring to the monitor). They got the chapel and the next one that says the subject. So then the next says subject lot. So, they don't own the lot next to it?

Marvin Aguilar the following lot? [Vice Chair responds "yes] Actually, those two lots where the parking lots those are actually combined and that's why you have a consolidated lot number.

Vice Chairman Cruz so, it's consolidated into one.

Marvin Aguilar yes sir.

Chairman Arroyo in reading the Minutes of the public hearing, there were a lot of questions and concerns about flooding in the area. Is there a flood zone there?

Marvin Aguilar well, this property drops approximately 15 to 20 westward towards an agricultural subdivision. By virtue of the development scheme of both the parking lot and the mortuary, they had to follow EPA storm drain requirements. While there is by natural characteristics that there is flooding issues in the area, they don't contribute to that.

Chairman Arroyo I think there was some discussion about a wall. Is there a wall?

Marvin Aguilar there is a wall sir. Actually it runs along their west boundary (refers to the map on the monitor).

Chairman Arroyo so, is it partially concrete and then cyclone fencing is that what it is?

Frank Taitano (Case Planner) on the parking lot yes.

Chairman Arroyo all that is intended to retain the water within the parking lot so the flooding issue has nothing to do from it coming off this property.

Marvin Aguilar and there is a surface retention program (my understanding) that the parking lot...a design the parking lot had to follow for them to occupy it as a parking lot.

Chairman Arroyo the Mayor's Office was she in favor of this? It wasn't really clear on her letter.

Frank Taitano during the public hearing they were actually in favor of it. But, when the Mayor's letter came out it was basically a recital of what the application is and not a position of the results of the public hearing. There were Municipal Planning Commission members there; Mr. Castro (I think) and Mr. Benavente and they did have questions in reference to other matters then the zone change; but, eventually they were in support of it.

Chairman Arroyo no opposition.

Frank Taitano there was only one, there was a gentleman there and his mother who basically had a big issue on the fact that there's continuous flooding everytime it rains down in their area. A lot of that water comes from Route 16 and the adjoining development that Kalingal complex. The site itself has a fence, which is a low-wall and chain-link, and raised where the entrance is so that all the water is contained in the lot. Like I was explaining to them in my experience because I have attended a lot of services up there during rainstorms, the place never floods. And the owner, Mr. Flores also explained that ever since they built the parking area it never floods.

Vice Chairman Cruz so this lady that was concerned about the flooding. Where is her

Frank Taitano it's down past the Kalingal complex.

Marvin Aguilar beyond the mortuary towards the northwest you actually have an agricultural subdivision that kinda levels out same elevation with the Guam International Airport.

Vice Chairman Cruz if you look at it is it behind the parking lot.

Frank Taitano no, more to the left behind the Kalingal complex.

Marvin Aguilar so, if the question is does this existing facility contributes to the flooding, no it doesn't. Neither Dr. Kalingal's actually doesn't because they are all contained within this fence system. Route 16 is of a higher elevation and water takes it natural course. Unfortunately, it does go down that road.

Commissioner Bathan what about the percolation? How does the water go down? Because if it floods ...

Marvin Aguilar it's pure limestone in that area and it's along the cliffline.

Commissioner Bathan does it take time for the water to go down?

Marvin Aguilar in areas where its pervious of course, but along ... it will sit for awhile along the pavement, on road pavement. There's a house there that actually had their entire lot flood which is including their septic tank leaching field and I don't know how that worked out.

Vice Chairman Cruz one question. Where is the fuel pipeline within that area?

Marvin Aguilar northwest and then along Route 16 at the overpass, the merging overpass that's where it starts the fuel line.

Commissioner Oh is this projection of the property line accurate with the map?

Marvin Aguilar no.

Commissioner Oh that triangular piece of property right there (referring to the site map on monitor). That whole commercial complex lies right on top of that triangular piece.

Marvin Aguilar no, it's inward. This is a little off.

Commissioner Oh so you're saying that this property should be like further over here. There is no description about what this is. Do you know what this is?

Marvin Aguilar it's a 40 or 50 foot wide easement. It's an easement and feeds all the way up to...it supports the subdivided lots to the rear.

Chairman Arroyo any other questions? [None] Okay, so at this time I would like to invite the applicant or the applicant's representative to come forward. Please state your name for the record.

Phil Flores I am President of Our Lady of Peace.

Richard Sana I am from FC Benavente Planners representing the applicant.

Chairman Arroyo anytime you are ready ---

Richard Sana if you don't mind I will not repeat everything that has already been said as far as the description of the projection. But as far as rezoning, this re-designation of the zoning, this property is actually surrounded by gas stations, medical clinic, building supply, hardware stores, the Airport, Revenue and Taxation being right across the street and other commercial and industrial uses also residential wasn't mentioned in the back or the northwest portion of the property. It is consistent and compatible with the surrounding area.

The proposed zoning would allow the mortuary business to thrive in a (undecipherable) very much in demand in Guam. It is one of the few mortuaries operating and serving our island community. And due to its location which is the north-central location it is very accessible for the island population which is of course is northern-central Guam.

We are here to answer any of your questions.

Commissioner Oh I have a question. Since the conception of this property, this project or this business, I think there was a mention about the parking lot. Initially it was leased. Am I right?

Phil Flores no. The building on which the funeral sits is an eighty year lease. The two properties that we are talking about are fee simple.

Commissioner Oh the parking lot is fee simple?

Phil Flores correct.

Commissioner Oh and the property in which the building is on top of that is leasehold.

Phil Flores that's leasehold.

Commissioner Oh now, has that been acquired? I think there was a mention of that.

Phil Flores no, it's an eighty-year lease and probably has like sixty-eight, sixty-five years left. The owner is in the Philippines and we make occasional outreaches to him to buy it. He's a single man, and he has no family for him to leave the property to and so we keep trying to buy it.

Commissioner Oh so when the project was initiated was ... did you guys already have a lease and also owned the other two properties fee simple?

Phil Flores we originally got the leasehold property and then over the years we acquired the ones next to us.

Commissioner Oh okay. So, when you guys were doing the actual design of the parking lot ... there was ... I don't know if the storm drainage or any of the flooding issues were considered?

Phil Flores yes, because we're lower than the road so we get the runoff from the road. But, we've always contained our own water. We put a very good storm drainage system in there. And actually it's more than that. We own the property behind us too. There was a mention of a hurricane fence, the property behind has a CMU wall all around it. So, any water that comes on our property we keep.

Commissioner Oh that property being ---

Richard Sana right to the west of the parking lot.

Michael Borja (Executive Secretary) and Commissioners this company recently purchased that bull-cart trail that separates it all.

[Brief discussion ensues on the location of the bull-cart trail and the location of the fuel line. It was noted by Mr. Frank Taitano is within the Airport's property, and approximately 500-feet away from the subject lot.]

Commissioner Oh I have another question. Considering the fact that these properties were recently purchased (I'm assuming) ---

Phil Flores 15-years ago.

Commissioner Oh 15-years ago; so, prior to that did the existing structure sit on top of the property prior to the acquisition of the fee simple?

Phil Flores going back to the cobweb mind. When we were designing the property, the building and we wanted to get more space out of it we originally thought we could build a building on the property and have a parking on the property. It didn't turn out to be that way. We made the building a little larger. And as the business grew there was more demand for parking, and so we started reaching out to our neighbors to buy those properties. To answer your question at first we thought we would have enough property for parking; we did for Code, but not for actual business. We have a memorial chapel in the building and we often have family viewings, and the family viewings can get very crowded so that is why we started buying the properties.

Chairman Arroyo any other questions? [None noted] Okay, so I'll open the floor to public comments. If there's anybody would like to say anything about this application please come forward.

Public Comments [Seeing none, Chairman Arroyo closed public comment period]

Chairman Arroyo anything else you'd like to say before we make a decision?

Phil Flores no, just that we are happy that we made it to the Commission and that you are considering us. It's a perfect business because taxes and death. (Laughter) Thank you very much.

Chairman Arroyo any other comments Commissioners? [None]

I am ready to entertain a motion if you are ready to put one forward.

Commissioner Bathan Mr. Chair, I would like to make a motion to approve Application No. 2015-37 for Our Lady of Peace Memorial Plan, Inc. requesting a Zone Change from "A" [Rural] to "C" [Commercial] zone on Lot 5223-1B-2-4NEW in Barrigada; subject to comments noted on the official ARC position statements.

Chairman Arroyo okay, so there is a motion on the floor by Commissioner Bathan. Is there a second?

Vice Chairman Cruz I second.

Chairman Arroyo seconded by the Vice Chair. Any discussion? [None noted from the Commissioners] I think it makes perfect sense to rezone this property so that there's a continuous zone across the whole facility. I'm all in favor of it.

On the motion, all in favor say aye [**Chairman Arroyo, Vice Chairman Cruz, Commissioners Bathan and Oh**], those opposed say nay. The motion is approved.

[Motion to approve Application No. 2015-37 was passed unanimously; 4 ayes, 0 nay]

Chairman Arroyo onto the next item on the agenda –

V. Administrative & Miscellaneous Matters

Conditional Use Renewal

- B. The Applicant, Reliable Builders, Inc. represented by Daniel D. Swavely; submits its third annual report and renewal request for a previously approved Conditional Use per for its temporary workforce housing facility, on Lot 5160-6-3, in the Municipality of Tamuning. Application No. 2000-12B. Case Planner: Frank Taitano

Chairman Arroyo we actually got the packet today, we received a different in our packet. We got the corrected one this afternoon, and I don't know if you have had a chance to look at it. Let's take a 10-minute recess so we can go through this application.

[Commission recessed at 2:10 p.m. and reconvened at 2:20 p.m.]

Chairman Arroyo we are back in session. We've had a chance to take a look at it. Frank ---

Frank Taitano (Case Planner) summarized the staff report to include purpose, facts, staff analysis/discussion, recommendation, and conditions. [For full content/context, refer to Attachment B.]

[Attachment B – Staff Report dated November 14, 2016]

Chairman Arroyo any questions?

Frank Taitano the place is real nice and very clean.

Commissioner Bathan it seems like it's well kept and clean.

Chairman Arroyo if there are no questions we will invite the applicant up.

Dan Swavely on behalf of Reliable Builders, and I am joined by Neal Ernie who is staff Project Engineer of the company.

Reliable continues to require this facility for its workers. It is not too full right now only 11 of the 36 units are presently occupied. It was not a great year for Reliable, but it's a good year coming

up and in the future. And we would like to continue to keep this facility properly permitted so that we can use at its full capacity whenever necessary. I agree with Frank, it is a well-kept facility. Constant improvements. Good behavior in there, good set of house rules, they are enforced. It's pretty much a model for temporary workforce housing on Guam. Any questions?

Commissioner Bathan what kind of recreation do you have at the facility.

Dan Swavely they have volleyball and basketball in there which are occasionally used. That's what we have and if there are questions or requests to change it we are always happy to accommodate it.

Commissioner Bathan I believe Public Works issued a new regulation on workforce housing that has something to do with the number of urinals/shower facility that is required. I believe it was issued about two weeks. Just make sure you check on that.

Dan Swavely the permit we get is a sanitary permit and dormitory permit from Public Health. Thank you for that. Honestly, I didn't know that and I will check into that.

Commissioner Oh I wanted to find out, what's the occupancy like currently.

Dan Swavely right now we have 11 of the 36 units that are occupied; however, in the past all 36 units.

Commissioner Oh number of personnel.

Dan Swavely oh, not sure. Two or three per unit average today.

Chairman Arroyo let me ask this.....that year went really fast. I think we had to ask the same question. But going forward, what is your take on this whole issue with foreign labor forces and the difficulty on getting them approved to relocate here to the island. How are you guys looking at that?

Dan Swavely well currently Reliable has about 50 staff, and out of the 50, 3 are H-2. So, it's not going to be too much of an impact for Reliable unless or until the projects increase then it's going to be everybody's problem. It's a huge problem. You know, I'm a little involved with it with respect to Lindy being the face on this lawsuit against Immigration. The lawsuit as I understand is not to change the prior denials into approvals. The lawsuit is simply to say before you can such a policy shift of that magnitude, the Law requires it to be formerly announced, and a little bit of due process before ... that's all the lawsuit is about.

[Discussion ensues]

Chairman Arroyo as push comes to shove; I know predominately most of the H-2 workers are male. If situations should be that you have to bring in qualified individuals of the opposite sex, could this facility house female occupants as well.

Dan Swavely actually, much better than most because most have temporary workers housing facilities are dormitories. These are 36 separate units. These were originally built as townhouses. This has an HPR and a homeowners' association. So, we could more easily do it then probably most other contractors with the typical dormitory arrangement.

I think what will happen is, if you could fast forward, I think what will happen is we will be required maybe to revert to this old system where we have to announce for vacancies in the States as well rather than just Guam. And we went through that period in the late 80's we went through that period. And so what happened was some applicants came to Guam to work. I mean they took up these announcements and they came to Guam to work. I worked for a lot of contractors at that time and we interviewed them and yeah they had the skills and everything, but man their attitudes was terrible. Nothing was right, it's too hot, not enough bars and so on, and not a single one worked out in that period that we brought Statesiders over. Not a single one. Not to say that it can't work out and not to say that maybe that's not a reasonable compromise with the H-2 applicant processing. But, it hasn't worked in the past.

Chairman Arroyo any other questions?

Dan Swavely Mr. Chairman, may I ask one other thing. We fully acknowledge that we have to come back for annual renewals. We're wondering whether or not we can simplify this annual renewal process by just submitting our request in letter form with the same sort of updated chauffeurs licenses, dormitory permits, etc. to the Chief Planner and try to or maybe simplify the process and not have to come before the Commission here. If the Chief Planner has an issue with something or we don't agree with something then maybe the Commission and serve as the....

Chairman Arroyo I think that question was raised last time. I think there is some revision in the relation that requires a hearing from the GLUC. Do you see that Kristan (Legal Counsel).

Kristan Finney (Legal Counsel) I am trying to find that, but I kind of remember that.

Dan Swavely I agree to the annual renewal. I wasn't sure if we had to come before the Commission. Listen, we'll do it of course. This is a bit of work for year after year after year; this is our fourth one.

Chairman Arroyo I think everything is working fine and these guys do go out and they do the inspections. Unless there is something in the law that doesn't your presence I don't have a problem. I believe that question was brought up last time and there was a provision that needed you to be present.

Dan Swavely okay, we'll wait to hear from you on that then. Thank you for that.

Chairman Arroyo anyway, if there aren't any other questions and you don't have anything else; I think just a motion to accept the report.

Commissioner Oh I move to accept the conditional use renewal of the applicant Reliable Builders Inc. represented by Mr. Dan Swavely for its 3rd annual report and renewal request for a previously approved conditional use permit for its temporary workforce housing facility on Lot 5160-6-3, Harmon, in the municipality of Tamuning, under Application No. 2000-12B.

Commissioner Bathan I'll second.

Chairman Arroyo moved by Commissioner Oh and seconded by Commissioner Bathan. Any discussion? No discussion.

All in favor of the motion say "aye" [**Chairman Arroyo, Vice Chairman Cruz, Commissioners Oh and Bathan**], all opposed say "nay."

[Motion passed unanimously; 4 ayes, 0 nay]

Chairman Arroyo motion passes. The last item on the agenda is a status report ---

Zone Variance/Status Report

- C. The Applicant, Guam Wanfang Construction, Ltd. represented by FC Benavente, Planners; six-month status report for a previously approved height variance for the proposed Pago Bay Marina Resort, on Lot 164-4NEW-1, in the municipality of Yona. Application No. 2015-29B. Case Planner: Celine Cruz

Marvin Aguilar reads Commission brief to include prologue, discussion/analysis, and recommendations. [For full content/context, please see attached report]

[Attachment C – Commission Brief dated November 17, 2016]

Chairman Arroyo for the record, we also received a copy of a letter dated November 10, 2016 from Mr. Michael Borja (Director) reminding Wanfang of the six-month requirement, and also reminding them of a continuing requirement for six month status reports.

Then we have a letter dated November 10, 2016 in response to Mr. Borja's letter from Mr. John Sherman thanking him for the reminder and that they would submit their report to us on November 14th, and they would be represented by Mr. Sana before the Commission. [For full content/context, please refer to Exhibits 1 and 2]

[Exhibit 1 – Letter to Wanfang Construction Ltd., dated November 10, 2016.]

[Exhibit 2 – Letter from AES Construction Inc., dated November 10, 2016.]

Chairman Arroyo any questions of the staff?

Vice Chairman Cruz based on the approval that we have given earlier and what have been submitted, are there great difference? Did they follow what was originally or did they change their design?

Marvin Aguilar I think still the same (inaudible/excess noise) level. But there was a change in the design in respect to the adjoining door. That could be interpreted as single units or (inaudible due to excess noise).

Vice Chairman Cruz that's fine.

Chairman Arroyo any other questions? [None noted] Okay, I'll invite the applicant ---

Richard Sana (FC Benavente, Planners) and of course Mr. John Sherman. We are here this morning (sic) to submit a status update on the project. And looking at the conditions where the applicant shall submit (inaudible due to excess noise) redesign plan. Such designs shall be based on a maximum footprint considerations by Law, which is 239 units. And basically the 239 units is the density allowed without a variance for the size of the property. And also we were approved for height for the two towers. The first tower starting with the building in common area for commercial part was approved for 58-feet from mean sea level. We are actually reducing that by 10-feet, which is now the redesign calls for 48-feet.

The tower one not to exceed 168-feet again is reduced now to 158-feet on the redesign. And the tower two not to exceed 158-feet will now be reduced to another 10-feet to 148-feet. We were approved for 12 and 11 stories and we are now at 11 and 10 stories instead and we are reducing each tower by one level.

It wasn't our intent to omit the part of because it was in my letter to Secretary Borja that we were here to give you the status update on the redesign and also the funding source for the project. It wasn't intentional to omit it in the status update report. It was basically we just forgot about it. So, but just to let the Commissioners know that funding source is still intact. It's still there and there's nothing to worry about that.

You all have the status update report and besides the size of the towers, and the density is actually reduced from 239 which is allowed to 235. And as you can see the new design also calls for adjusting the setbacks. Wetland boundary to building is now the minimum is 35-feet. From Route 4 to edge of the right-of-way is no 40-feet. From mean high water mark to building is a minimum of 99-feet.

We submitted a parking plan of 328 parking stalls. Parking level I there will be 138 stalls plus 8 ADA; basement parking level II there will be 147 stalls plus 8 ADA, and also on the parking onsite there will be 27 parking plus 1 bus stall.

Chairman Arroyo Richard, sorry to interrupt. On the status report Page 1, Item III the new design you have 232 dwelling units that should be 235?

Richard Sana yes, the engineer is correcting that to 235.

Chairman Arroyo go ahead, I'm sorry. You can continue, I'm sorry to interrupt.

Richard Sana Mr. Sherman is correcting that number to 235 instead of 232. Also, there were....the test warrant which was also part of the requirement by Guam EPA to be conducted prior to anything that we do on the property has been completed. And that is also for the percolation rate is complete also. We or Mr. Sherman has met with Army Corps of Engineers (we don't know her name). She's the new Army Corps of Engineer representative here on Guam, and she went out there and actually took a look at the site. And Mr. Sherman discussed with her where the building was going to be constructed, and she felt that there was no impact at all to the wetlands and there's no issue there. And she also offered that if we need any help to comply with any of the regulations that she would be willing to assist us in that sense. And also she referred us to meet with Ann Simeon the coral, reef, water coordinator from BSP from Government of Guam to discuss developing the eco-friendly shoreline with available approved methods. And we would be willing to work with her and consultation with her which is the best way to have a clean environment up there by the shoreline area.

We are here to answer anything that

Chairman Arroyo any questions?

Commissioner Bathan I have a question. You mentioned earlier that your funding source is still intact?

Richard Sana yes.

Commissioner Bathan can you give us some more detail on that. Do you have any document to submit to us that it is intact.

John Sherman up until today we haven't received no indication from the owner that the funding is a problem. As you well may know we are still going through our judicial ... cases are still pending. There are two cases pending. Accordingly, we actually have not progressed very well, and on the contrary, we also progressed very well. Let me explain two sides. We couldn't progress very well on a lot of the designs simple because of the uncertainty of the outcome of the judicial review with the height variance. Yes, we have used the time wisely and we've done

a lot of things to tweak or design and improve our design. The solution that is in front of you is not a design package, but a schematic design package as if you were to see it for the first time. The only changes is that we have complied with some of the conditions that the Commission has imposed on us, and that is the cases of the height variance. We've worked very hard. We've modified the floor plan. We tweaked the setting of the corridor and we were able to fit 11-units per floor and still come up with the density under the approved of 239. Right now the reason why the number is fluctuating 235 versus 233 is we're still designing. We are at the desiging level and we are not firm on anything, but we are still within the envelope of approved 239 units and we will stay under that threshold. And same thing with the height. We were approved for 259 and 260 of floor height. We are ... both buildings are 10-foot below and still have enough ceiling height at lower lobby level to make the building usual. To make it very very user friendly. I think Mr. Sana mentioned briefly about meeting with Army Corps of Engineers. Well, we've been using our time quite wisely and solving some of the concerns that was aired during our very discussions about a lot of the issues; namely traffic, (undecipherable) and the environmental issues. We've met with the Army Corps of Engineers, and to the process we've learned some more things and some of the ideas that we trade back and forth. Things like eco-friendly wooden boardwalk, bio-swale between the wetlands and our boundaries so that it can be eco-friendly setting. So far, we've worked with the tremendous amount of setback. We've increased our setback from the (undecipherable). We are improving the design so that we could put wooden boardwalks throughout the projects. So, we are tweaking. We are using our time ... to improve our design. And that's kind of a rough package that you are looking at.

The fourth condition item that the Planner has review comments, and I'd like to sort of explain the situation on that and that includes the funding source. From the onset of this project, we've asked the funding bank to provide assurance that this is properly funded. I think we've all went through that twice. So far, we have not seen any indication or any word from the owners otherwise. So, we are moving along in that direction. But, we did receive an indication from the owners that the Judicial review case doesn't get resolved within sometime this year that we are to proceed with the applying for clearing and permits and what have you. So, we will move forward sometime in January timeframe.

And I do apologize for the confusion for the failure to submit the timely submittal of our review package. It was never our intent to be late. I think we've been communicating with the Case Planner as early as September 30. We've been exchanging emails. I think we were supposed to submit on the 10th but upon receipt of the direction that it was due on the 14th that we submitted and complied with that requirement. So, it's never been our intent to violate or go against on the decision that is imposed on us by the Commission. On the financial status report, going back...I can go back and ask the owners to provide such document if necessary if it satisfies the Commission; I could do that but. it would the third time. So far we haven't heard anything and we are proceeding. The requirement for (undecipherable) exceeded.

Density had been previously reviewed by this Commission and have approved the 239 units. If you look very carefully in the package each unit have been identified from A, B, C thru H. And it

is true that each of the units have two access to the corridor. The intent is, it's very clear, because the onset of our GLUC hearing at the beginning we've always expressed interest from the owner that they would have uses as an interim hotel until such time it will be occupied as condominium. So, the application itself is HPRable (sic) condominium, but owner when we turn over ownership of the units and/or use it as a hotel for a certain period of time and to facilitate that usage is why there are two connecting doors. And, it being "R2" the Zoning Law allows use of condominium and in a hotel setting. The requirements for a hotel are far less than the requirement for HPR conditions. So, are we violating the rules of law up to 470 (sic). I think I'd like to offer the answer that's emphatically no because the Commission also had a second chance to review this project again because when we come with the HPR document you will be able to count how many marketable titles there are. So, there will be only 235 marketable titles. So, whether the unit has two doors to the corridor is not an issue here. Or shouldn't be an issue.

The parking requirements. We submitted in the package that's in front of you and it shows multi-dimensions in the parking. We are merely studying that number of parking to show that there is possible to have ample number of parking to meet the requirements of condo as well as a hotel. I think we know the statute very well that the size of each of the stall need to be complied with the GCA Code. We will certainly show that on our next detailed submission if the Commission requires it. But, the number of parking has been satisfactorily provided, and ADA parking locations although it is not currently shown in the drawing are being considered. There are numbers being put in. We know there is a five percent requirement of ADA unit as well as the ADA parking unit. So, those are in play. But, rest assure our submission is merely an update to what happened to us since the last NOA because we are in sort of in limbo, for the lack of a better description. And that's what's in front of you.

Chairman Arroyo any questions? I just want to clarify. I think in the very beginning it's been our impression that this facility was going to be multi-family dwellings, and it was under that impression that we approved the height variance. I'm sorry ... yeah, the height variance. Are you saying now that until you get the HPR it's going to be operating as a hotel?

John Sherman we would probably coming with the preliminary HPR documents before we go to actually permitting. So, we would like for the Commission to review that preliminary HPR documents; and thereafter, it would be owner's economic decision whether to go ahead and market it and become a condominium setting or they have always expressed the fact that they would like to operate the facility for interim use as a hotel use.

Chairman Arroyo all the documentation in the original application showed it as a condominium and intended for residences. And your market initially was foreign investors that were going to live there as a resident. I think you called them the individuals coming to escape cold weather to the island to do that. And you also indicated that you had brought up some statistics regarding the housing shortage after the military buildup and that this project was going to be in some way be partial relief of the housing demand and that some of the units would be available for locals to purchase.

John Sherman I am not privy to how the marketing scheme is going to be by the owner. However, you are correct.

Chairman Arroyo I am just saying that this is within the documentation.

John Sherman you are correct, we did say that. But there is at the sametime we also expressed the original intent by the owner to interim operate as a hotel (sic). And I think that was discussed and I think it's in the records somewhere. We have expressed that ---

Vice Chairman Cruz when this thing was being discussed we constantly ask you you told us it's going to be for residential. Your plan here that you submitted is for 300 residence okay; accessory building in an "R2." I'm looking at your submission and if you can go to A-16 in your drawing you've got units that have kitchen and you have units that don't have kitchen. So, how can a residential unit exist with no kitchen? Are the guys going to go downstairs and eat at the restaurant.

John Sherman I think I've explained that ... one time ----

Vice Chairman Cruz you understand the explain (sic) but what you're not coming here ... I don't know whether you're hearing or you refuse to hear. You came to us as a residential not as a hotel. Right now this drawing is like a hotel.

Commissioner Bathan you're changing the use.

Vice Chairman Cruz you see, in your drawing you never an adjoining door. This drawing has an adjoining door.

John Sherman it has not all units have connecting doors, but we did have (inaudible due to excess noise) connecting doors. On page, original submission, if you look at Type A, number E-A, you'll see that there is a connecting door that is showing. So, it's always been our intent to serve highest intent to interim use these units as hotel units.

Celine Cruz can I just say that the drawings here were based on the requested density variance to increase the density. And so whether or not there are no connecting ... there are more connecting doors in these plans now then there were in the original submission. And even if you intended to use it as a hotel the density requirements are the same.

John Sherman no, there's very significant difference in hotel use and opposed to condominium. Condominium requires a lot more strict, a lot more requirements. We are preparing the documents to comply with all the HPR conditions. Because at some point in time this would be a condominium. It will be marketed as condominium. It is an "R2" zone and the usage of the facility is never been questioned because it is allowed "R2," "R2" is allowed to be a hotel.

Marvin Aguilar I think the point here sir is, and in our argument and the reason why we calculated the density as is is that the property is "R2," it does permit for hotels, but you still have to follow that minimum density requirement. These exceptions to the density for hotel use is for hotel use in the hotel zone ---

Commissioner Bathan not in an "R2."

Marvin Aguilar and not in an "R2." So, when the Commission says 239 you will have the opportunity to apply a density of 239 apartment units, condominium units, hotel units, what have you that is permitted under an "R2." But, it doesn't change per proposed use. So, the density applies to ... it applies to the zoning designation as opposed to the proposed use.

John Sherman I defer (sic) with your opinion simply that the ... all our prior hotel projects in Tumon have always been allowed to have connecting door and always counted as a one unit.

Commissioner Bathan because that is under the hotel zone not under the "R2" zone.

John Sherman I don't know of any statute that stipulates that distinction.

Marvin Aguilar the interim hotel requirements, rules and regulations are specific to hotel use in hotel zone. "R2" uses likewise is specific for density and the uses. It is clear ---

John Sherman even in the condition where the units have already been built such as Ladera Towers has been built originally as a condominium with HPR who's operating as a hotel for number of years successfully and there has been no issues as such and no it is reverted back to original intent to condominiums. So, there has been precedences (sic) that such applications interpretations have been applied.

Commissioner Bathan the issue that we have here is that the density is 239. By having adjoining doors, you can practically double that density. That's not we considered when we heard this application and approved this application.

John Sherman but the NOA condition was not about density, density was denied.

Commissioner Bathan but you still cannot go over 239 because that is the maximum that is allowed on your property.

Richard Sana I think what you are alluding to is that in the hotel zone it's based on the lot area per room which is 400-square feet you have a room. And the other zones the 1,250 per dwelling still stands is the standard

John Sherman yes, but the use of each unit whoever buys the unit how they use to rent the unit out whether it be daily basis or monthly basis or weekly basis is the owner's prerogative. I

don't think it's the condition where we can stipulate that the unit must be used as a private residence. I think if I own the unit I can rent it out to somebody on a daily basis. I don't know of any law that prohibits that.

Vice Chairman Cruz there maybe no law to prohibit it, but when you come and tell me that this is what you're going to do and then you change and then you're going to tell me there's no law that says I cannot change ----

John Sherman we've always expressed that. We've always stated that if you go back to your records you'll see that we have expressed the owner's intent that there was a possibility that it would be used as a hotel unit.

Vice Chairman Cruz I need time to digest this better.

Commissioner Bathan yes, me too.

Commissioner Oh I was just going to agree with them. I need to take a look at the documents in further detail.

Commissioner Bathan because it is totally different from what we perceived it was when we heard this applicant.

Commissioner Oh what really disturbs me is the fact, I mean from the beginning of this project it's the lack of documentation. Initially after our initial hearing we've had subsequent hearings. Everytime we had further questions, I mean further inquiries it was mostly it was oral and we are hearing oral responses again. Especially when it comes to the financial status of the project. I don't see any documentation saying there is no issue. I've never seen one from the beginning. This is a concern to me, and I am pretty sure that it is a concern to the rest of the Commissioners. The density requirements we can argue that all day. And considering the amount of public attention of like outcry, public concerns, I am not too sure that those concerns have been addressed or whether it's been considered. One of the things that we do look at is the six-month deadline. Although there was no intent I can completely understand that, but considering the situation we're in, it was pretty much...it was your...you guys had to be responsible for meeting the deadline. Especially considering the amount of attention given to this project currently. It gives not only us but also the public some type of confidence and I don't see that confidence.

Richard Sana okay. Mr. Chairman I would like to request the Commission to table this meeting. I don't see us going anywhere until we can come and sit down this I would also like to discuss this with Mr. Sherman. And I know what was approved in the GLUC meeting and I think the interpretation....some interpretation that needs to be cleared up as far as what Mr. Sherman has been sharing and what the Commission based their decision on in the last hearing.

Michael Borja (Executive Secretary) Mr. Chairman, I respectfully ask the Commissioners not to table this decision, but in fact look at the different recommendations that were provided to you by the Planning Staff and take into consideration what they have asked for.

Gentlemen, you were given a host of conditions to be responsible for under the Notice of Action that you were given. It took three hearings for us to get to that point. It took an audience that gathered here that was demonstrably upset with whole process. In the end, we granted you a Notice of Action with certain conditions, pages of them, and you had to report to us within six months. If you couldn't follow that one condition, you're not giving us very much confidence that you're going to provide any and comply with all these others.

If we are going to begin the debate on the density of this development we have a problem already. One of the things that you guys consistently were insisting upon us to act on this as quickly as we could is because of the potential of losing the funding by your owner. Yet, you provide no written documents to support that the funding is there and we cannot accept not having something in writing when it was specifically requested under these conditions.

The result of this Notice of Action put not only this Commission but this Department in the brightest of spotlights and in the hottest of waters that I saw neither of you attend not a single one of the multiple public hearings that were held for four different Bills that are sitting in the legislative hall right now waiting for action to be taken upon them as a result of this singular application. So, you have put us in a spot that is not a very good spot. And there cannot be a reason for this Commission nor this Department to take and give any other considerations and any possible any other waivers if you're not going to comply with what we are asking for. I forgot to do a report is not a good responsible answer to provide to us. We are not your keepers, and we don't have to be telling you and reminding you. Yet you should be taking upon us to come and talk to us when you are going to propose new floor plans which in the consideration that you've heard from both the Planning Staff and the Commissioners, differ in its definition for this "R2" zone as it would for a hotel zone.

We want to work with you, but you have to work with us. And that work is not to be commenced and concluded in this meeting alone. This would be the meeting that we would have to take action on whatever needs to be done. The purpose of your presence here was to provide your six-month report to include a financial position. And yet we got something that was totally different. We got it late and we got information that didn't look right. And so then we have these questions. I come with this kind of attitude because I am the one that has had to face a lot of that as well as some of the Commissioners, and it wasn't a pleasant feeling. But, I didn't see you guys there. We are also facing two lawsuits as you mentioned. I don't think I've had any other kind of issue come up and seen in many different, in this department alone or at any other departments that have gotten this kind of attention. And it's not something that we want to have to continue on, and I'm surprised really too that members of the community haven't attended even though they were told and even though we publicly announced it. But nevertheless, this is

important. And we have tried to be as...we want to take this as serious as possible and not give an excuse I forgot and give a report that's half or is incomplete. Mr. Chairman thank you.

Chairman Arroyo thank you.

Richard Sana I signed my name on that report the status report that I gave you. I submit that letter....I didn't submit any other variation to some of the stuff that was said today. That is my report. That is what I submitted. My name is there. I am just asking the Chairman to consider what I submitted. That is what is before you.

Commissioner Bathan are you talking about this report?

Richard Sana yes.

Commissioner Bathan but this is not even compliant because it didn't show what was required on the six-month status report.

Richard Sana what is required on the six-month status report is the funding source to get the status of that and Mr. Sherman stated that the funding is still intact. They are still going on ...there was a test completed recently that's from that source. But I'm saying is that whatever is submitted to you by me, my name is there. That is before you today. That is my status update.

Chairman Arroyo I think the Executive Secretary has a very valid point and he made some really good arguments. I attended some of those public hearings, and to be raked over the coals by the public was an unpleasant experience for me and I'm sure as well for him. Except for Mr. Wu's daughter, I didn't see anybody else from the company being represented and speaking out in favor of this project as well as providing any kind of input with respect to the four laws that was put forward that changed the way that this Commission does business.

The reason you all know how contentious this application was. I mean, you saw the public outpouring. You heard it on TV, you heard it on the radio, you read it in the newspaper; it was something that was happening daily. There were protests out on the road. Concerned citizens voicing their outcry. They called it a monstrosity. We felt that your project had merit. And we approved it. But we also considered the public's point of view. And the whole reason behind those pages of conditions was so that we put into place some very strict controlled and monitoring of this project. So we would be assessed every step of the way exactly what is going on in how you are handling things. One of the items that I still don't know if it has been adhered to is the re-interment of the ancient Chamorros. Where are we on that? I mean, this is over a couple of years? And it's not in your report. No mention of that. That was probably one of the most basic things that you would put in that this condition has been met. Not there. Commissioner Oh had some excellent points as well. From day one, this whole process has

been lacking detail, written detail. And we've been relying on your oral presentation and for this project of this magnitude that just doesn't cut it.

I am inclined to agree with the Executive Secretary that we adopt one of the recommendations from the Planning staff, and I would like to put that forward to the rest of the members of the Commission. There are three; and one of them is to revoke height variance and the other one is to issue and serve an Order to Show Cause and third one is to have them come back as Mr. Sana is asking a continuation. I am not in agreement with the third one. My choice is to issue an Order to Show cause because it has been said that the report that you submitted today is woefully lacking in detail and it doesn't comply what we expected to see.

So, if I could have a motion on either one or two of the recommendations.

Commissioner Oh I will make a motion. I would like to make a motion to issue and serve a Notice to Show Cause to the applicant Guam Wanfang Construction Ltd. represented by FC Benavente, Planners for a previously approved height variance for the proposed Pago Bay Marina Resort on Lot 164-4NEW-1, in the municipality of Yona, Application No. 2015-29B.

Chairman Arroyo so moved by Commissioner Tae. Do I have a second?

Commissioner Bathan if I could add something to that. The Chief Planner has identified four items on the parking requirements, and I wanted the applicant to include that in their status report.

Chairman Arroyo we can move on the motion and then will direct the Chief Planner to include the four items and anything else we need to get back from them.

Commissioner Bathan I second.

Chairman Arroyo any discussion on the motion. [None] All in favor of the motion say "aye" [**Chairman Arroyo, Vice Chairman Cruz, Commissioners Oh and Bathan**], all opposed say "nay." Motion passes.

Mr. Chief Planner – please issue and serve an Order to Show Cause on the applicant. We'd like for them to reappear before this Commission at our next meeting. And what we would like at a minimum to be included in your Notice to Show Cause are the four items (as noted on Commission Brief) and any other information that you think is valid that needs to be presented for us at that meeting.

Commissioner Oh I would like to add the burial remains. I think the Chairman had mentioned that earlier. Address the update and status of that. And also in the report there was an indication that they met with the Army Corps of Engineers. If they could provide a status update on the possible impacts to the wetlands.

Vice Chairman Cruz in writing.

Commissioner Oh in writing, from the applicant.

Chairman Arroyo okay, so that is the order. You will get it in the Order.

John Sherman before we go, thank you very much. I would like to address Mr. Borja's comment. It has never been our position to be insensitive to what this Commission has gone through on the decision that you have rendered. We strongly believe that you have made the most possible wisest decision that was available to you at that time and we respect that. I am sorry that the conditions that were imposed on that thing was not to your satisfaction of our submission. We will amend that. Again, our intent was never to ignore how this affected Commission as a whole and what the Commission has gone through on the process not only public hearing but also current lawsuits that are pending. If there is anything we can do to help and mitigate the situation we are more than happy to participate. We chose to be silent simply because it would be more antagonizing for us to show the face in light of all the heated discussion. This is the reason why we stayed away, and not because of lack of our support or interest of the decision that the Commission has rendered.

Chairman Arroyo thank you very much for those comments. Okay, back to the agenda. If there are no other items, is there anything else that we need to discuss?

Kristan Finney (Legal Counsel) I found that section that you guys were talking about; it's in Section 61309 under 4-A, and it says that renewal of workforce housing that it has to be subject to the inspection by the Chief Planner and a public hearing before the Commission.

Chairman Arroyo any other business to discuss?

Commissioner Bathan our next meeting is ---

Cristina (Recording Secretary) the next meeting is scheduled for December 13th which is a Tuesday since December 8th is a local holiday.

Commissioner Bathan I will not be available.

Michael Borja there is unfortunately a hearing that just got scheduled for that afternoon at the sametime for couple of Land Management bills.

[Discussion ensues. It was noted that there will be no meeting in December and that the next tentative meeting is scheduled for Thursday, January 12, 2017.]

Marvin Aguilar just real quick sir. The symposium is scheduled for tomorrow; for the planners and it will be at the Pacific Star Hotel from 8:30 a.m. to 4:30 p.m.

[Discussion continues on the agenda topics for the upcoming symposium.]

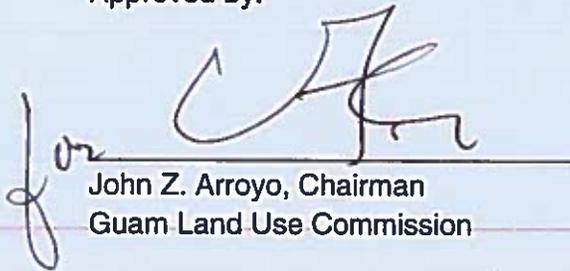
Chairman Arroyo if you can attend it that would be nice. So, on the motion to adjourn ---

VI. Adjournment

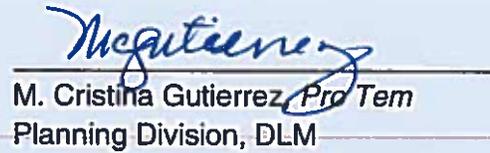
Vice Chairman Cruz moves to adjourn today's meeting, seconded by **Commissioner Bathan**; with all in favor.

**The regular meeting of the Guam Land Use Commission for Tuesday, November 29, 2016
was adjourned at 3:30 p.m.**

Approved by:


John Z. Arroyo, Chairman
Guam Land Use Commission

Transcribed by:


M. Cristina Gutierrez, *Pro Tem*
Planning Division, DLM

Date approved: January 12, 2017



GUAM LAND USE COMMISSION

Chairman John Z. Arroyo
Vice Chairman Victor F. Cruz
Commissioner Conchita D. Bathan

Commissioner Tae S. Oh

Michael J.B. Borja, Executive Secretary
Kristan Finney, Assistant Attorney General

AGENDA

Regular Meeting

Tuesday, November 29, 2016 at 1:30 p.m.

Department of Land Management Conference Room

590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning

[As advertised in the Guam Daily Post on November 22, 2016 & November 27, 2016]

I. **Notation of Attendance** [] Quorum [] No Quorum

II. **Approval of Minutes**

- GLUC Regular Meeting of Thursday, October 27, 2016

III. **Old or Unfinished Business [None]**

IV. **New Business**

Zone Change

- A. The Applicant, Our Lady of Peace Memorial Plan, Inc. represented by FC Benavente, Planners; request for a zone change from "A" (Rural) to "C" (Commercial) zone to have one uniform zoning for its existing facility located on Lot 5223-1B-2-4NEW, in the Municipality of Barrigada, under Application No. 2015-37.

Case Planner: Frank Taitano

V. **Administrative and Miscellaneous Matters**

Conditional Use Renewal

- B. The Applicant, Reliable Builders, Inc. represented by Daniel D. Swavely; submits its third annual report and renewal request for a previously approved conditional use permit for its temporary workforce housing facility, on Lot 5160-6-3, Harmon, in the Municipality of Tamuning, under Application No. 2000-12C.

Case Planner: Frank Taitano

Zone Variance/Status Report

- C. The Applicant, Guam Wanfang Construction, Ltd. represented by FC Benavente, Planners; six-month status report for a previously approved height variance for the proposed Pago Bay Marina Resort, on Lot 164-4NEW-1, in the Municipality of Yona, under Application No. 2015-29B.
Case Planner: Celine Cruz

VI. Adjournment



ATTACHMETN A
DIPATTAMENTON MINANEHAN TANO'
(Department of Land Management)
GUBETNAMENTON GUAHAN
(Government of Guam)



EDDIE BAZA, CALVO
 Governor

MICHAEL J. B. BORJA
 Director

RAY TENORIO
 Lieutenant Governor

DAVID V. CAMACHO
 Deputy Director

Street Address:
 590 S. Marine Corps Drive
 Suite 733 ITC Building
 Tamuning, GU 96913

November 14, 2016

MEMORANDUM

Mailing Address:
 P.O. Box 2950
 Hagåtña, GU 96932

To: Chairman, Guam Land Use Commission

From: Guam Chief Planner

Subject: Staff Report - Application No. 2015-37

Website:
<http://dlm.guam.gov>

1. PURPOSE:

- a. **Application Summary:** The applicant, Our Lady of Peace Memorial Plan, Inc., represented by Mr. Richard Sana of FC Benavente, Planners is requesting approval for a Zone Change from "A" (Agricultural) to "C" (Commercial) in order to have a one uniform zone for the existing Our Lady of Peace Facility on Lot 5223-1B-2-4NEW, Municipality of Barrigada.
- b. **Legal Authority:** Sections 61630 to 61638 (Changes of Zones) of Chapter 61 (Zoning Law), Title 21, GCA (Real Property)

2. FACTS:

- a. **Location:** The subject site is located along Route 16 directly across the Department of Revenue and Taxation.
- b. **Lot Area:** 1,957 Square Meters or 21,064.97 Square Feet.
- c. **Present Zoning:** "A" (Agricultural) Zone
- c. **Field Description:** The site is a existing parking lot with existing landscaping and an approved on site storm water retention system.
- e. **Masterplan:** Undesignated
- f. **Community Design Plan:** Conservation

E-mail Address:
dmdir@land.guam.gov

Telephone:
 671-649-LAND (5263)

Facsimile:
 671-649-5383



g. **Previous Commission Action:** None

3. APPLICATION CHRONOLOGICAL FACTS:

- a. **Date Application Accepted:** September 30, 2015
- b. **Date Heard By ARC:** October 15, 2015
- c. **Public Hearing Results:** June 14, 2016
(See Attachment "A")

Note: In response to the application the Mayor and Vice Mayor of Barrigada submits a response letter attached as Attachment "B"

4. DISCUSSION and STAFF ANALYSIS:

The applicant's request is to rezone Lot 5223-1B-2-4NEW, Barrigada, from "A" (agricultural) zone to "C" (Commercial) zone in order to create a uniform zoning designation for its existing funeral home facility.

As shown on Exhibit "D" (Conceptual Site Plan) the subject lot is located adjacent to Route 16 (Army Drive) and is intergraded with the existing parking layout located on the adjacent lot that also accommodates the existing funeral home building. The funeral home facility which includes the intergraded parking areas has been in existence since the initial occupancy of the funeral home facility and has become an accepted commercial establishment along Route 16.

Pursuant to Section 61630 (Requirements For Changes) of Chapter 61 (Zoning Law) 21GCA, where it states; **"The Commission may, with the approval of the Governor, change the zones established under this Chapter whenever it finds that the public necessity, convenience and general welfare justify such action"**.

The applicant in response for the Zone Change submits the following justification:

- a. **Compatability of the proposed project with adjacent and neighborhood developments as they exist;**

Continuation of Memorandum

RE: Staff Report - Application No. 2015-37

Zone Change-Lot 5223-1B-2-4NEW

Municipality of Barrigada

November 14, 2016

Page 3 of 4

Response:

The property is adjacent to and primarily supports its owner's main facility, its mortuary business. The adjacent property is presently zoned "C" (commercial) and is the site of an actively operating mortuary. This facility is appropriately located along a fully improved major Guam highway (i.e. Route 16), allowing for ease of access to the general public patrons. Located directly across the highway from this property, are active commercial and government facilities. The proposed zone change, properly "back fits" the proper zoning, ("C") onto this accessory lot. This zone change from "A" to "C" is very compatible with adjacent and neighborhood developments as they exist.

- b. Intentions and purpose of the Zone Change request justifying public necessity, public convenience and general welfare.

Response:

The public necessity and convenience is demonstrated in placing the proper zoning label to the subject lot, which presently serves as a parking lot supporting the main facility. The main facility sits on "C" zoned property. Proper zoning is necessary for consistent licensing and permitting of the activities on the properties, especially as the primary and accessory facilities are owned by the same company, Our Lady of Peace Memorial Plan, Inc.

The general welfare is elevated as a result of increased property tax revenue generated because of the property's change from the lower property tax rated "A" zone, to the higher property tax rated "C" zone.

We submit that this zone change request is a public necessity, is for public convenience, and provides for the general welfare of the people of Guam.

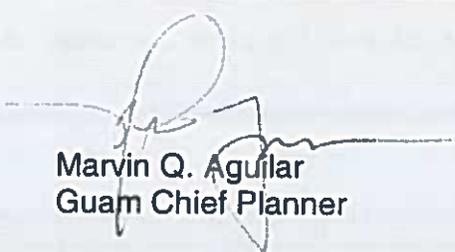
In our analysis planning staff finds that the proposal to change the designated zone of the existing intergraded parking lot of the Our Lady of Peace chapel complex which has existed since the initial occupancy of the facility while not impacting nearby residential and retail sales areas and from a planning perspective supports the applicant's position that the proposed development is the best use of the subject property.

This request has received no objection Position Statements from ARC members with conditions and the Department of Agriculture (DoAg), pursuant to Chapter 61, Section 61637 has submitted an Agricultural Impact Statement (AIS) stating that, DoAg does not oppose the development and recommends that the developer include a comprehensive **Landscaping Plan** that incorporates the use of **Indigenous and or fruit and ornamental** varieties of trees.

Continuation of Memorandum
RE: Staff Report - Application No. 2015-37
Zone Change-Lot 5223-1B-2-4NEW
Municipality of Barrigada
November 14, 2016
Page 4 of 4

In addition, the results of the community public hearing, was positive and the Mayor responded with a letter. In conclusion, we find the above and the context of the application provides justification that the public necessity, convenience and general welfare, supports a positive action on the zone change request.

5. **RECOMMENDATION:** Planning staff recommends Approval subject to the ARC Position Statement and the permitting agencies requirements.



Marvin Q. Aguilar
Guam Chief Planner

Attachments: ARC Position Statement Summary

Case Planner: F. Taitano

Minutes of Public Hearing

Application No. 2015-37 – Zone Change Lot 5223-1B-2-4NEW, Municipality of Barrigada

On June 14, 2016 - 6:01P.M. a public hearing was conducted at the Barrigada Community Center, present were the applicant's representatives, Mr. Richard Sana with FC Benavente, Planners, Mr. Philip Flores and Mr. Filemon Sunga with Our Lady of Peace Memorial Plan, Inc., the Mayor, Ms. June U. Blas, Vice Mayor Mr. Jessie P. Bautista, Barrigada MPC Members Mr. James Castro and Mr Francisco Benavente and two public attendees, Ana Llarenas and Bernard Llarenas.

Case Planner called the meeting to order, introduced himself, the application and the applicant's representative and handed the floor to the representative to present the application.

Mr. Richard Sana presented the zone change requested, the history and location of the existing parking area and its function as part of the existing Our Lady of Peace Memorial Plan mortuary complex and the location of the complex in relation to the location of other commercial and industrial uses in the area. The floor was then opened for questions and concerns from the attendees.

Comments:

Mr. Frank Benavente (MPC Member) asked, if the approved plans for the existing parking lot with a storm drain system? Mr. Sana explained that the plans that was approved for a building permit included the plans for the parking area on the subject lot which included a storm drain system to retain the water within the site.

Mr. Bernard Llarenas asked, what is the plan to retain the water runoff from the facility within the site? Mr. Sana explained that the existing system that was approved was designed to include the runoff from the facility and the parking areas on the lot where the buildings are located and the parking area that is existing on the subject lot to be rezoned.

Mr. Bernard Llarenas asked, what kind of system is it and what is the elevation of the existing system? Mr. Sana and case planner responded that they believe the system to be an underground french drain type system.

Mayor Blas asked, if the applicant is planning to build a wall? Mr. Filemon Sunga explain that the existing fence around the complex consist of a wall on the bottom of the chain link fence to prevent runoff from flowing out of the parking areas.

Mr. Philip Flores explains that they are also concern about the flooding problem in the area, but their facility was permitted and built with a storm drain system that was designed to mitigate all on-site storm water runoff, to include, that generated by the building and all the parking areas. He also explained that in all the years they are in operation he has never seen the facility or parking area flooded during raining days.

Minutes of Public Hearing
Application No. 2015-37 – Zone Change
Lot 5223-1B-2-4NEW, Municipality of Barrigada
Page no. 2

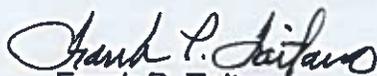
Mr. James Castro (MPC Member) commented that the zone change will require an Agricultural Impact Statement and was acknowledged by the applicant and case planner.

Mr. Frank Benavente (MPC Member) commented that the owner is telling the truth and is willing to work with his neighbors.

Mayor Blas commented that her office is looking into the flooding situation in the area as part of their flood mitigation request to DPW.

During the entire meeting Mr. Bernard Llarenas commented on the dynamics of hydrology and his concern is that the storm runoff from the facility and parking areas do contribute into the flooding problem in the area, the case planner explained that although he has some knowledge on the matter he is not qualified to response to his concern but he has utilized the parking area for a couple of viewing during a rainy tropical storm and there was no flooding in the facility or parking area.

After no further concerns or question was put forth by the attendees the meeting was adjourned at 7:05 P.M.


Frank P. Taitano
Case Planner

BARRIGADA

Office of the Mayor & Vice Mayor
124 Luayao Lane, Barrigada, Guam 96913

June 27, 2016

Mr. John Arroyo
Chairman
Guam Land Use Commission
Department of Land Management
Tamuning, Guam 96931

RECEIVED

6-27-16

RECEIVED

JUN 27 2016

Department of Land Management
Time

MSG/23

Re: Application No. 2015-37: Zone Change from "A" (Rural) to "C" (Commercial) for Lot 5223-1B-2-4NEW, Barrigada, Guam.

Chairman Arroyo & Members of the Commission:

Buenas yan Hafa Adai! Vice Mayor Jessie P. Bautista and I. together with the Barrigada Municipal Planning Council hereby inform you and members of the Guam Land Use Commission that we reviewed the Applicant's submission and request for a zone change. Specifically, **Application No. 2015-37**, deals with a zone change for Our Lady of Peace Memorial Plan, Inc. in order to have one uniform zone for the existing facility situated on Lot 5223-1B-2-4NEW, Barrigada.

In our review, we found the following:

1. Our Lady of Peace Memorial Plan, Inc., currently operates a funeral home with a small parking area on their adjacent Lot 5223-1B-2-2-NEW. This property is currently zoned "C" Commercial.
2. Since the facility's inception, additional parking was provided on two (2) adjacent leased properties zoned "A" (Rural) have recently been purchased and consolidated as Lot 5223-1B-2-4NEW.
3. The Applicant requests to have a unified zone for the facility and its existing parking amenities. Approval of the zone change will allow Our Lady of Peace Memorial Plan, Inc., to have a singular zoning designation of "C" (Commercial) for their mortuary facility on Lot 5223-1B-2-2NEW and their parking facility on Lot 5223-1B-2-4NEW.

Once again, thank you for allowing us to comment on the abovenamed application.

Sincerely,


JUNE U. BLAS
Mayor


JESSIE P. BAUTISTA
Vice Mayor



DIPĀTTAMENTON MINANEHAN TĀNO'
(Department of Land Management)
GUBETNAMENTON GUĀHAN
(Government of Guam)



Street Address:
590 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J. B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

November 14, 2016

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

MEMORANDUM

TO: Guam Land Use Commission (GLUC) Members
FROM: Chairman, Application Review Committee (ARC)
SUBJECT: Summary of Positions Submitted by ARC
RE: Application No. 2015-37 (Zone Change)

Website:
<http://dlm.guam.gov>

Listed below is the compilation of Positions taken by the various ARC member agencies as submitted to Planning Division, Department of Land Management. The conditions as imposed by the ARC member agencies are listed when applicable.

DEPARTMENT OF LAND MANAGEMENT (DLM):

Planning staff recommends Approval subject to the ARC Position Statement and the permitting agencies requirements.

GUAM ECONOMIC DEVELOPMENT & COMMERCE AUTHORITY (GEDCA):

GEDCA has no objections

GUAM POWER AUTHORITY (GPA):

GPA has reviewed the application and submits the following position statement:

A. Comments and Recommendations Concerning GPA requirements:

1. Applicant is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
 - a. Coordinate overhead/underground power requirements with GPA Engineering for new structures;

E-mail Address:
dlmdir@land.guam.gov

Telephone:
671-649-LAND (5263)

Facsimile:
671-649-5383

Continuation of Memorandum

Ref: ARC Summary of Position Statements - Application No. 2015-37

November 14, 2016

Page 2 of 7

- b. Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electric Code;
 - c. Maintain adequate clearance between any structures and electric utility easements in accordance with NESC and GPA requirements;
 - d. Developer/Owner shall provide necessary electric utility easements to GPA prior to final connection;
 - e. Provide scheduling and magnitude of project power demand requirements for new loads;
 - f. All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials;
2. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations;
 3. A system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities;
 4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments:

GPA has no objection to the request subject to the conditions cited above.

DEPARTMENT OF PARKS AND RECREATION (DPR):

DPR has reviewed the application and submits the following position statement:

"We reviewed the subject undertaking and have determined that no cultural properties will be affected by the zone change of the subject lot. Therefore, we have no objection to the approval of this Zone Change Application."

GUAM WATERWORKS AUTHORITY (GWA):

GWA's memorandum shall serve as GWA's position statement to the zone change request related to availability of water and sewer infrastructures to serve the subject lot. This position statement shall not be construed as notice that water and sewer systems have the capabilities to accommodate the proposed development including fire flow without on-site or off-site improvements. Any extension of the water and sewer systems and/or capacity upgrades required to serve the property shall be subject to the rules and regulations of GWA. Any required extension to the existing facilities to serve the subject properties shall be at expense of the applicant.

Continuation of Memorandum

Ref: ARC Summary of Position Statements - Application No. 2015-37

November 14, 2016

Page 3 of 7

Given the information provided in the application and existing conditions observed in the field, the following is GWA's position on the zone change application.

1. GWA has no objections to the proposed zone change as it will not have a direct impact to water consumption or wastewater generation.
2. GWA is to be consulted for any future construction on the lot to determine water and wastewater needs, as well as potential impacts to those systems.

This GWA Position Statement shall remain valid for 365 calendar days from the date of this response.

DEPARTMENT OF PUBLIC WORKS (DPW):

DPW has completed its review of the subject application and has no objection to the applicant's request. Therefore, DPW recommends approval.

BUREAU OF STATISTICS AND PLANS (BSP):

The Bureau has completed its review of the subject application and has the following comments and recommendations:

1. **Agricultural District.** The applicant is advised to consult with the Department of Agriculture (DOAg) on an Agricultural Impact Statement pursuant to 21 GCA Chapter 61 § 61637 which states:

"No additional land may be established as a rural zone and no land presently zoned A may be rezoned without the Commission first having considered an agricultural impact statement which shall be submitted by the Director of the Department of Agriculture. This statement shall provide a detailed statement of:

- (a) *The agricultural impact of the proposed rezoning upon the agricultural components of the Guam Master Plan.*
- (b) *Any adverse conservation or agricultural effects which cannot be avoided should the rezoning be approved.*
- (c) *The Director's opinion whether said rezoning should be approved and reasons therefore."*

The Bureau recommends the applicant to submit the Agricultural Impact Statement as required.

2. **Water Source Protection.** The applicant's property is located above the Northern Guam Lens Aquifer (NGLA). The NGLA is an essential resource for Guam and is the primary source of drinking water for eighty percent of the island population.

Moreover, the U.S. Environmental Protection Agency has designated the NGLA as Guam's sole source aquifer. Therefore, it is of paramount importance to prevent sources of contamination from entering Guam's water supply. The primary goal for protecting the aquifer is to safeguard human health and the environment by maintaining water quality for continued use. The applicant is advised to consult with the Guam Environmental Protection Agency (GEPA) to comply with an Aquifer Protection Review pursuant to the "Federal Safe Drinking Water Act," § 1424 and "Guam Safe Drinking Water Act," 10 GCA Chapter 53.

Additionally, the Bureau recommends the applicant coordinate with the Guam Waterworks Authority (GWA) for water resource conservation and ensure the NGLA is protected through compliance with the "Water Pollution Control Act," 10 GCA Chapter 47; "Water Resources Conservation Act," 22 GCA Chapter 5; 10 GCA Chapter 46, as amended by P.L. 17-87, and the Guam Water Resource Development & Operating Regulations.

3. **Stormwater Management.** Managing stormwater is a crucial element in the protection of Guam's vital water resource. Surface runoff carries pollutants into Guam waters causing siltation and increasing sediment loads, which impairs receiving waters. The alteration of vegetated areas into buildings, driveways, parking lots, roads and other surfaces prevent water from filtering into the ground and greatly increases the runoff volume created during storms. Studies show that impervious surfaces directly correlate to increased runoff volumes as well as waterway velocities, erosion, and flooding.

The application lacks a drainage plan showing the methods and facilities for collection and disposal of stormwater on the property as required in the Zoning Change Application. The applicant's rear property slopes about 20 feet within an estimated 300 feet distance to the next lowest level according to the Guam Resource Environmental Tool (GREAT). Moreover, the applicant, Our Lady of Peace Memorial, Inc. plans to expand mortuary services according to statements made by the applicant's representative, Richard Sana at the Application Review Committee meeting on October 15, 2015.

The Bureau is concerned that additional construction to the property will increase stormwater runoff. If best management practices are not in place during and after construction to control runoff and erosion from the site, this activity can adversely impact drinking water source and surrounding neighbors.

Therefore, the Bureau highly recommends that the applicant:

- a) Submit a drainage plan showing methods or practices for managing stormwater on site.

- b) Examine the existing stormwater catchment system and consult with Guam EPA if the system is appropriate and an effective implementation of stormwater practices.
- c) Incorporate stormwater facilities inclusive of but not limited to multi-cell ponding basins, bioretention systems, and bioswales into their site design as an infrastructure improvement.
- d) Implement erosion and sediment control methods to prevent sediment from leaving the project site during and after construction.

We also refer the applicant to the "Guam Erosion and Sediment Control Field Guide" for contractors and site inspectors and to the CNMI Guam Stormwater Management Manual for detailed stormwater treatment criteria and standards. An electronic version of the manual and field guide can also be obtained at the Guam EPA office or the Bureau.

4. **Low Impact Development (LID).** The LID approach works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features and minimizing the use of impervious surfaces to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Impervious surfaces from parking stalls, driveways, and rooftops accelerate stormwater runoff.

According to the National Oceanic Atmospheric Administration's (NOAA) Coastal Change Analysis Program (C-CAP) Land Cover Atlas, 40.42 percent of Fonte River-Frontal Hagatna Bay Watershed is developed and 21.65 percent is impervious between the years 2005 to 2011. The analysis further identifies areas with impervious surface rates approaching or exceeding 12 percent to 15 percent will likely experience negative impacts to water quality. Severe degradation can be expected when rates reach 25 percent.

The applicant's properties comprise approximately 97 percent of impervious surfaces in addition to the 20-foot slope. If the mortuary facility is expanded, the Bureau is concerned that additional impervious surfaces may exacerbate flooding concerns in the area and surrounding neighbors if practices are not in place to manage runoff on the on the property. The applicants are encouraged to implement LID practices such as permeable parking and walkways, grassed swales, island bio-retentions, and/or rain gardens into the landscape as a means to reduce runoff and control erosion from their property.

For guidance on these practices, an electronic file of the guidebook *Island Stormwater Practice Design Specifications* is available at the Bureau's, Guam Coastal Management Program (GCMP) office.

5. **Native Flora and Fauna Protection.** The Bureau recommends the applicant consult with the DOAg's Division of Forestry and Soil Resources Division and Agricultural Services Division on using native plants to avoid and/or minimize the spread of invasive species. Additionally, the Bureau advises the applicant to consult with DOAg regarding the use of organic fertilizers or pesticides for landscaping purposes to avoid additional contaminants from entering any natural water sources. The applicant is encouraged to consult with GEPA regarding their Pesticide Control Program.
6. **Entrance/Exit.** The Bureau recommends the applicant to coordinate with the Department of Public Works (DPW) to determine appropriate ingress and egress as well as proper parking configuration and dimensions. Additionally, the Bureau suggests the applicants to work with DPW to ensure all building codes and regulations mandated under 21 GCA Chapter 61 of "The Parking and Loading Space Regulations" and 21 GCA Chapter 67 of "The Building Code".
7. **Setbacks.** The Bureau recommends that proper setback requirements are followed and to include a perimeter or buffer area either through landscaping or fencing to ensure the minimum yard and lot areas is established for light industrial zones. The Bureau recommends the applicants to coordinate with the GEPA as stated in §61501 Minimum Yards and Lot Areas "(c) *Lots over the aquifer. Lot sizes and set-back on properties above the aquifer shall be established by the Guam Environmental Protection Agency.*"
8. **Government Clearances.** Should future expansion occur, the applicant is advised to obtain appropriate government agency review and approval to ensure compliance.

In light of the points presented above, the Bureau has no objections to the rezoning of Lot 5223-1B-2-4NEW from "A" to "C" for its existing parking lot. However, the applicant must take into account the risk for increased flooding and decreased water quality in Guam's drinking water should future expansion occur. The Bureau encourages the applicant to comply with the above listed recommendations.

DEPARTMENT OF AGRICULTURE (DoAg):

Agriculture has reviewed the subject lot for a zone change from "A" to "C" and does not oppose the development. Agriculture recommends that the developer include a comprehensive **Landscaping Plan** that incorporates the use of **Indigenous and or fruit and ornamental** varieties of trees.

Continuation of Memorandum

Ref: ARC Summary of Position Statements - Application No. 2015-37

November 14, 2016

Page 7 of 7

As Guam loses native habitat to increased development it is imperative that any future development replace and preserve these species that provide a valuable resource that protects important ecological habitat and the "Northern Aquifer" the primary source of drinking water for the island. As these trees disappear the function they perform in preventing erosion and filtering contaminants from entering the aquifer and coastal systems is lost. By replanting and ensuring that a healthy stand of these trees are in place the developer takes an important step in protecting our resources. In addition to these benefits of a landscaping plan the trees will also provide windbreak capabilities, shading, filtration system, habitat for indigenous and migratory species of birds and the overall aesthetic visual improvement appeal rather than just a concrete jungle.

Our Forestry **division** grows and maintains these native tree species should you choose to incorporate them into the project. Contact Justin Santos and Christine Fejeran at 300-7976/7 for assistance and consultation at 300-7976. For assistance in using fruit and ornamental tree species contact our Agricultural **Development Services** where we maintain an Organic and Environmental **Demonstration Farm** that showcases proper erosion control measures using trees. In addition vetiver grass that can also aid in erosion control can be made available to clientele upon consultation.

GUAM ENVIRONMENTAL PROTECTION AGENCY (GEPA):

Has not submitted Position Statement as of Staff Report date.

GUAM FIRE DEPARTMENT (GFD):

Has not submitted Position Statement as of Staff Report date.

DEPARTMENT OF CHAMORRO AFFAIRS (DoCA):

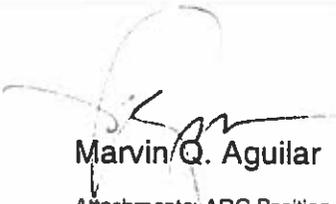
Has not submitted Position Statement as of Staff Report date.

DEPARTMENT OF PUBLIC HEALTH AND SOCIAL SERVICES (DPH&SS):

Has not submitted Position Statement as of Staff Report date.

GUAM PUBLIC SCHOOL SYSTEM (GPSS):

Has not submitted Position Statement as of Staff Report date.


Marvin Q. Aguilar

Attachments: ARC Position statements
CC: Executive Secretary, GLUC



The Honorable
Eddie Baza Calvo
Governor

The Honorable
Ray Tenorio
Lieutenant Governor


public works
DIPATTAMENTON CHE'CHO' PUPLEKO
Glenn Leon Guerrero
Director
Felix C. Benavente
Deputy Director

October 28, 2015

MEMORANDUM

TO: Director, Department of Land Management
FROM: Director
APPLICATION: 2015- 37
APPLICANT: Our Lady of Peace Memorial Plan
SUBJECT: Zone Change from Agricultural ("A") to Commercial ("C")
Lot No. 5223-1B-2-4NEW, Barrigada

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Buenas yan Hafa Adai!

The applicant, Our Lady of Peace Memorial Plan, Inc, is requesting a zone change from "A" to "C". The main facility sits on a "C" zoned property. The existing parking area of this facility is an "A" zone and the purpose of this requests is to have a uniform zoning of the lot with the primary use of the facility, the Our Lady of Peace Funeral Home. The existing facility is located along Guam Highway Road (Route 16), and to allow an access for the general public and patrons. The properties from along this area are mostly Commercial Zone and across, is a Government facility which is the Department of Revenue and Taxation. The total area of this property is 954+/- square meters.

The Department of Public Works has completed its review on the above subject application and has no objection to the applicant's request. Therefore, DPW recommends approval.

If you have any questions, please call John F. Calanayan, Acting Engineer In - Charge or Maryrose M. Wilson, Engineer III in the Division of Capital Improvement Projects (CIP) at 646-3189/3224.

Dangkulu na Si Yu'os Ma'ase!

JFC

GLENN LEON GUERRERO



Department of Agriculture Dipattamenton Agrikottura



Eddie Baza Calvo
Governor

Ray Tenorio
Lt. Governor

Director's Office 300-7970 / 7969 / 7966
Agricultural Development Services 300-7973 / 7972 / 7967
Plant Nursery 300-7974
Aquatic & Wildlife Resources 735-3955/56; Fax 734-6570
Forestry & Soil Resources 300-7975/6
Plant Inspection Station 475-1426/27; Fax 477-9487
Animal Health 300-7965 Fax 734-6569

Matthew L.G. Sablan
Director

Jessie B. Palican
Deputy Director

October 19, 2016
Memorandum

To: Director, Department of Land Management

Attn: Executive Secretary, Guam Land Use Commission

From: Director of Agriculture

Subject: "Agricultural and Environmental Impact Statement on
Lot 5223-1B-2-4NEW Located off of Route 16 in Barrigada. (Our Lady of Peace Memorial
Plan Inc.)

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OCT 24 2016
Department of Land Management
TITLE: 19 110 18

Agriculture has reviewed the subject lot for a zone change from "A" to "C" and does not oppose the development. Agriculture recommends that the developer include a comprehensive Landscaping Plan that incorporates the use of Indigenous and or fruit and ornamental varieties of trees. As Guam loses native habitat to increased development it is imperative that any future development replace and preserve these species that provide a valuable resource that protects important ecological habitat and the "Northern Aquifer" the primary source of drinking water for the island. As these trees disappear the function they perform in preventing erosion and filtering contaminants from entering the aquifer and coastal systems is lost. By replanting and ensuring that a healthy stand of these trees are in place the developer takes an important step in protecting our resources. In addition to these benefits of a landscaping plan the trees will also provide windbreak capabilities, shading, filtration system, habitat for indigenous and migratory species of birds and the overall aesthetic visual improvement appeal rather than just a concrete jungle.

Our Forestry division grows and maintains these native tree species should you choose to incorporate them into the project. Contact Justin Santos and Christine Fejeran at 300-7976/7 for assistance and consultation at 300-7976. For assistance in using fruit and ornamental tree species contact our Agricultural Development Services where we maintain an Organic and Environmental Demonstration Farm that showcases proper erosion control measures using trees. In addition vetiver grass that can also aid in erosion control can be made available to clientele upon consultation.

For other questions or concerns regarding Agriculture's position please contact our office at 300-7973. Thank you in this regard.

MATTHEW L.G. SABLAN
Director

10/24/16



Eddie B. Calvo
Governor

Ray Tenorio
Lt. Governor

Department of Parks and Recreation
Government of Guam
490 Chalan Palasyo
Agana Heights, Guam 96910
Director's Office: (671) 475-6296/7
Facsimile: (671) 477-0997
Parks Division: (671) 475-6288/9
Guam Historic Resources Division: (671) 475-6294/5
Facsimile: (671) 477-2822



Robert S. Lizama
Director

William N. Reyes
Director

In reply refer to:
RC 2016-0002

October 20, 2015

Memorandum

To: Executive Secretary, Guam Land Use Commission
From: Director, Department of Parks and Recreation
Subject: Application for Zone Change from "A" to "C" Our Lady of Peace Memorial Plan, Inc. Lot 5223-1B-2-4NEW, Barrigada, Guam

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OCT 23 2015
Department of Land Management
Time [initials] Int'l [initials]

APP 2015-37

We reviewed the subject undertaking and have determined that no cultural properties will be affected by the zone change of the subject lot. Therefore, we have no objection to the approval of this Zone Change Application.

Should you have any questions, please do not hesitate to call us.

Sincerely,

Robert S. Lizama
Acting

CP



GUAM POWER AUTHORITY

ATURIDÀT ILEKTRESEDÀT GUAHAN
P.O.BOX 2977 • AGANA, GUAM U.S.A. 96932-2977

October 21, 2015

RECEIVED

OCT 23 2015

Department of Land Management
Title [unclear] [unclear]

MEMORANDUM

To: Chairman, Guam Land Use Commission
Executive Secretary, Guam Land Use Commission

From: General Manager

Subject: Lots 5223-1B-2-4NEW, Municipality of Barrigada, (Our Lady of Peace Memorial Plan, Inc.); Zone Change Application from "A" (Agricultural) to "C" (Commercial) to have one uniform zone for the owner's facilities on the properties. **Application No. 2015-37**

Guam Power Authority has reviewed the application described above and submits the following position statement:

A. Comments and Recommendations Concerning GPA requirements:

1. Applicant is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:
 - Coordinate overhead/underground power requirements with GPA Engineering for new structures.
 - Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code.
 - Maintain adequate clearance between any structures and electric utility easements in accordance with NESC and GPA requirements.
 - Developer/Owner shall provide necessary electric utility easements to GPA prior to final connection.
 - Provide scheduling and magnitude of project power demand requirements for new loads.
 - All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.
2. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
3. A system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.
4. All costs associated with the modification of GPA facilities shall be chargeable to the customer. This includes relocation costs, new installation costs and any required system upgrades.

B. General Comments

GPA has no objection to the request subject to the conditions cited above.


JOHN M. BENAVENTE, P.E.

ASG/arp

hw

INFRASTRUCTURE CERTIFICATION FORM

Agency Certifying: **Guam Power Authority**
 Applicant: Our Lady of Peace Memorial Plan, Inc.
 Location: Lots 5223-1B-2-4NEW, Barrigada

Type of Application: Zone Change
 GLUC/GSPC Application No. 2015-37

Brief Project Description:
 "A" to "C" to have one uniform zone for the owner's facilities on the properties.

For the purposes of this Certification, GOVERNMENT SERVICES, FACILITIES, and INFRASTRUCTURE include, but are not limited to: **power lines poles and facilities; water lines, pumps and facilities; sewer and liquid waste disposal; storm water disposal; solid waste disposal; telephone lines and facilities; schools; health facilities; police and fire fighting service and facilities; roads; traffic and street lights; parks and recreational activities.**

1. I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently **AVAILABLE AND IN PLACE** to support this project:
 Yes No

2. If the answer to #1 above is YES, then:
 I hereby certify that the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE are currently **ADEQUATE** to support this project:
 Yes No

3. If the required GOVERNMENT SERVICES, FACILITIES and INFRASTRUCTURE currently in place are **NOT AVAILABLE** or they are **AVAILABLE, BUT NOT ADEQUATE**, itemize the services, facilities and infrastructure that are needed, the estimated cost thereof and whether funds are currently available and identified to develop such services, facilities and infrastructure:

Services, Facilities and Infrastructure Needed	Cost of Upgrades	Funds Available	Date Available	Funds Identified
Please see comments below				

I hereby certify that the foregoing is true and correct to the best of my knowledge.

me

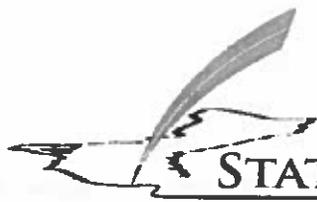
 JOHN M. BENAVENTE, P.E.
 General Manager

10/23/15
 Date

Comments:

Based on a preliminary inspection of the site, the electrical facilities may require upgrading to meet the demand of the proposed project. A system impact assessment maybe required to determine the effect of this facility on GPA's existing power distribution system. The applicant will be responsible for the cost of any required system upgrade.

Eddie Baza Calvo
Governor of Guam

 **BUREAU OF
STATISTICS & PLANS**

SAGAN PLANU SIHA YAN EMFOTMASION

Government of Guam

P.O. Box 2950 Hagåtña, Guam 96932

Tel: (671) 472-4201/3

Fax: (671) 477-1812



William M. Castro
Director
James T. McDonald
Deputy Director

Ray Tenorio
Lieutenant Governor

DEC 1 2015

MEMORANDUM

To: Chairman, Guam Land Use Commission
Via: Executive Secretary, Department of Land Management
From: Director, Bureau of Statistics and Plans
Subject: **APPLICATION NO.** 2015-37; **LOCATION:** Lot No. 5223-1B-2-4NEW, Barrigada; **APPLICANT:** Our Lady of Peace Memorial Plan, Inc., c/o Richard J. Sana; **PROPOSED USE:** Rezone property from "A" (Agriculture) to "C" (Commercial) to establish singular zoning designation for current land use.

RECEIVED
DEC 15 2015
Department of Land Management
Time 3:30 PM
WB 12/16
PT

Buenas yan Hafa Adai! The applicant, Our Lady of Peace Memorial Plan, Inc. represented by Richard J. Sana, is requesting a zone change from "A" Agricultural to "C" Commercial in order to unify the current business operations on the property in Barrigada.

Our Lady of Peace Memorial Plan, Inc. operates a funeral home with a small parking area on their adjacent lot 5223-1B-2-2NEW. This property is currently zoned "C". At the facility's inception, additional parking was attained on two (2) adjacent leased properties. These properties, zoned "A" have recently been purchased and consolidated as Lot 5223-1B-2-4NEW. The applicant requests to have a unified zone for the facility and its existing parking lot.

Currently used as a parking area for the funeral home, the subject property has an area of 21,064.97 (±) square feet or a total of 0.48 (±) acre and is fronting Route 16, a major highway. The basic infrastructure of sewer, power and water are within the area and are servicing the mortuary facility. The Guam Resource Environmental Assessment Tool Map identifies the surrounding land zones to be agricultural lots. However, the adjacent property is zoned commercial and within the 500-1,000 (±) foot radius, there are mixed uses of single-family and multi-family residential, heavy-industrial, and Government use designations as well.

The Bureau has completed its review of the subject application and has the following comments and recommendations:

1. **Agricultural District.** The applicant is advised to consult with the Department of Agriculture (DOAg) on an Agricultural Impact Statement pursuant to 21 GCA Chapter 61 §61637 which states:

CG

"No additional land may be established as a rural zone and no land presently zoned A may be rezoned without the Commission first having considered an agricultural impact statement which shall be submitted by the Director of the Department of Agriculture. This statement shall provide a detailed statement of:

(a) The agricultural impact of the proposed rezoning upon the agricultural components of the Guam Master Plan.

(b) Any adverse conservation or agricultural effects which cannot be avoided should the rezoning be approved.

(c) The Director's opinion whether said rezoning should be approved and reasons therefore."

The Bureau recommends the applicant to submit the Agricultural Impact Statement as required.

- 2. Water Source Protection.** The applicant's property is located above the Northern Guam Lens Aquifer (NGLA). The NGLA is an essential resource for Guam and is the primary source of drinking water for eighty percent of the island population. Moreover, the U.S. Environmental Protection Agency has designated the NGLA as Guam's sole source aquifer. Therefore, it is of paramount importance to prevent sources of contamination from entering Guam's water supply. The primary goal for protecting the aquifer is to safeguard human health and the environment by maintaining water quality for continued use. The applicant is advised to consult with the Guam Environmental Protection Agency (GEPA) to comply with an Aquifer Protection Review pursuant to the "Federal Safe Drinking Water Act," § 1424 and "Guam Safe Drinking Water Act," 10 GCA Chapter 53.

Additionally, the Bureau recommends the applicant coordinate with the Guam Waterworks Authority (GWA) for water resource conservation and ensure the NGLA is protected through compliance with the "Water Pollution Control Act," 10 GCA Chapter 47; "Water Resources Conservation Act," 22 GCA Chapter 5; 10 GCA Chapter 46, as amended by P.L. 17-87, and the Guam Water Resource Development & Operating Regulations.

- 3. Stormwater Management.** Managing stormwater is a crucial element in the protection of Guam's vital water resource. Surface runoff carries pollutants into Guam waters causing siltation and increasing sediment loads, which impairs receiving waters. The alteration of vegetated areas into buildings, driveways, parking lots, roads and other surfaces prevent water from filtering into the ground and greatly increases the runoff volume created during storms. Studies show that impervious surfaces directly correlate to increased runoff volumes as well as waterway velocities, erosion, and flooding.

The application lacks a drainage plan showing the methods and facilities for collection and disposal of stormwater on the property as required in the Zone Change Application. The applicant's rear property slopes about 20 feet within an estimated 300 feet distance to the next lowest level according to the Guam Resource Environmental Tool (GREAT). Moreover, the applicant, Our Lady of Peace Memorial, Inc. plans to expand mortuary services according to statements made by the applicant's representative, Richard Sana at the Application Review Committee meeting on October 15, 2015.

The Bureau is concerned that additional construction to the property will increase stormwater runoff. If best management practices are not in place during and after construction to control runoff and erosion from the site, this activity can adversely impact drinking water source and surrounding neighbors.

Therefore, the Bureau highly recommends that the applicant:

- a) Submit a drainage plan showing methods or practices for managing stormwater on site.
- b) Examine the existing stormwater catchment system and consult with Guam EPA if the system is appropriate and an effective implementation of stormwater practices.
- c) Incorporate stormwater facilities inclusive of but not limited to multi-cell ponding basins, bioretention systems, and bioswales into their site design as an infrastructure improvement.
- d) Implement erosion and sediment control methods to prevent sediment from leaving the project site during and after construction.

We also refer the applicant to the "Guam Erosion and Sediment Control Field Guide" for contractors and site inspectors and to the CNMI Guam Stormwater Management Manual for detailed stormwater treatment criteria and standards. An electronic version of the manual and field guide can also be obtained at the Guam EPA office or the Bureau.

4. **Low Impact Development (LID).** The LID approach works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features and minimizing the use of impervious surfaces to create functional and appealing site drainage that treats stormwater as a resource rather than a waste product. Impervious surfaces from parking stalls, driveways, and rooftops accelerate stormwater runoff.

According to the National Oceanic Atmospheric Administration's (NOAA) Coastal Change Analysis Program (C-CAP) Land Cover Atlas, 40.42 percent of Fonte River-Frontal Hagåtña Bay Watershed is developed and 21.65 percent is impervious between the years 2005 to 2011. The analysis further identifies areas with impervious surface rates approaching or exceeding 12 percent to 15 percent will likely experience negative impacts to water quality. Severe degradation can be expected when rates reach 25 percent.

The applicant's properties comprise approximately 97 percent of impervious surfaces in addition to the 20-foot slope. If the mortuary facility is expanded, the Bureau is concerned that additional impervious surfaces may exacerbate flooding concerns in the area and surrounding neighbors if practices are not in place to manage runoff on the on the property. The applicants are encouraged to implement LID practices such as permeable parking and walkways, grassed swales, island bio-retentions, and/or rain gardens into the landscape as a means to reduce runoff and control erosion from their property. For guidance on these practices, an electronic file of the guidebook *Island Stormwater Practice Design Specifications* is available at the Bureau's, Guam Coastal Management Program (GCMP) office.

5. **Native Flora and Fauna Protection.** The Bureau recommends the applicant consult with the DOAg's Division of Forestry and Soil Resources Division and Agricultural Services Division on using native plants to avoid and/or minimize the spread of invasive species. Additionally, the Bureau advises the applicant to consult with DOAg regarding the use of organic fertilizers or pesticides for landscaping purposes to avoid additional contaminants from entering any natural water sources. The applicant is encouraged to consult with GEPA regarding their Pesticide Control Program
6. **Entrance/Exit.** The Bureau recommends the applicant to coordinate with the Department of Public Works (DPW) to determine appropriate ingress and egress as well as proper parking configuration and dimensions. Additionally, the Bureau suggests the applicants to work with DPW to ensure all building codes and regulations mandated under 21 GCA Chapter 61 of "The Parking and Loading Space Regulations" and 21 GCA Chapter 67 of "The Building Code".
7. **Setbacks.** The Bureau recommends that proper setback requirements are followed and to include a perimeter or buffer area either through landscaping or fencing to ensure the minimum yard and lot areas is established for light industrial zones. The Bureau recommends the applicants to coordinate with the GEPA as stated in §61501 Minimum Yards and Lot Areas "*(c) Lots over the aquifer. Lot sizes and set-back on properties above the aquifer shall be established by the Guam Environmental Protection Agency.*"
8. **Government Clearances.** Should future expansion occur, the applicant is advised to obtain appropriate government agency review and approval to ensure compliance.

In light of the points presented above, the Bureau has no objections to the rezoning of Lot 5223-1B-2-4NEW from "A" to "C" for its existing parking lot. However, the applicant must take into account the risk for increased flooding and decreased water quality in Guam's drinking water should future expansion occur. The Bureau encourages the applicant to comply with the above listed recommendations.

As government officials, it is our primary responsibility to ensure that the construction and operations of this proposed endeavor are in a manner designed to protect the public health, safety, and to promote the public welfare and convenience. We also encourage the applicants to protect Guam's natural resources and to ensure they are used in a sustainable manner.


WILLIAM M. CASTRO

cc: GEPA
DPW
GWA
DPR
GPA
DOAg



RECEIVED

11/5/2015 Cg
DLM Planning

GUAM WATERWORKS AUTHORITY

Gloria B. Nelson Public Service Building
688 Route 15, Mangilao, Guam 96913

MEMORANDUM

October 19, 2015

TO: Director, Department of Land Management

FROM: Mark G. Miller, Interim General Manager *MB 11/6*

SUBJECT: Position Statement on Zone Change Application No. 2015-37;
Zone Change from "A" to "C" for Lot 5223-1B-2-4NEW, in
Barrigada, Guam

APPLICANT: Our Lady of Peace Memorial Plan, Inc.

RECEIVED

NOV 6 2015

Department of Land Management
Time *9:30* Int *MD*

The Guam Waterworks Authority (GWA) has reviewed the applicant's request on a zone change for its existing parking lot. The applicant proposes the zone change to have one uniform zoning with its existing facility located on the adjacent lot in the Municipality of Barrigada.

This memorandum shall serve as GWA's position statement to the above zone change request related to availability of water and sewer infrastructures to serve the above subject lot. This position statement shall not be construed as notice that water and sewer systems have the capabilities to accommodate the proposed development including fire flow without on-site or off-site improvements. Any extension of the water and sewer systems and/or capacity upgrades required to serve the property shall be subject to the rules and regulations of GWA. Any required extension to the existing facilities to serve the subject properties shall be at expense of the applicant.

Given the information provided in the application and existing conditions observed in the field, the following is GWA's position on the zone change application:

1. GWA has no objections to the proposed zone change as it will not have a direct impact to water consumption or wastewater generation.
2. GWA is to be consulted for any future construction on the lot to determine water and wastewater needs, as well as potential impacts to those systems.

CG

This GWA Position Statement shall remain valid for 365 calendar days from the date of this response. Please contact GWA Engineering Division regarding water and sewer system improvement design and construction standards and procedures. For additional information, please contact Mauryn McDonald, Permits & New Area Development Supervisor at 300-6054.

ATTACHMENT B

DIPĀTTAMENTON MINANEHAN TĀNO'
(Department of Land Management)
GUBETNAMENTON GUĀHAN
(Government of Guam)



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J. B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

Street Address:
590 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

Website:
<http://dlm.guam.gov>

E-mail Address:
dlmdir@land.guam.gov

Telephone:
671-649-LAND (5263)

Facsimile:
671-649-5383

November 14, 2016

Memorandum

To: Chairman, Guam Land Use Commission

From: Guam Chief Planner

Subject: Staff Report – Third (3rd) Annual Renewal Request- Application No. 2000-12B

- PURPOSE:** The applicant, Reliable Builders, Inc., submits its Third (3rd) annual renewal request of its Conditional Use Permit approval for its Temporary Workforce Housing Facility (TWHF) on Lot 5160-6-3, Harmon, Municipality of Tamuning.
- LEGAL AUTHORITY:** Title 21, GCA (Real Property), Chapter 61 (Zoning Law) and Section 61303 (Conditional Use), Public Law 31-72 and in its Notice of Action, dated October 14, 2011, Document No. 828333, Condition No. 3, where it states "That this initial approval shall be for Twenty Four (24) Months and therefore shall be renewed annually (Per Section 2(4)(A) of Public Law 31-72".
- FACTS:**
The subject application is a Housing Facility for Temporary Workers in a fully contained, thirty six (36) symmetrical three-bedroom residential units community to include existing elements for sleeping, toilet and shower facilities, laundry, cooking, security including fire/medical emergency response capability, recreational facilities, transportation services, on site storm water retention system, landscaping, a six (6) foot high perimeter fence and an in house set of Rules and Regulations that addresses security and safety practices, including other factors such as personnel access and exit procedures and personal/social code of conduct.

The applicant, Reliable Builders, Inc. pursuant to Commission Condition No. 3 where it states, ***“That this initial approval shall be for Twenty Four (24) Months and therefore shall be renewed annually (Per Section 2(4)(A) of Public Law 31-72”*** hereby submits its 3rd annual renewal request and in general, provides that, as approved by the Commission, elements of the application consisting of the TWHF’s house rules, medical plan, transportation plan, food vendor services, safety and security plan, housing facility management, recreation activities and landscaping are functionally existing as approved by the Commission, the applicant also provided responses to the conditions of the Commission’s approval and included copies of current vehicle registrations and chauffer’s licenses, a copy of DPH&SS Workers Dormitory and Sanitary Permits and photos of the complex.

On October 18, 2016 Planning Staff conducted a site visit of the approved TWHF and find that the facility is well kept, clean, volleyball/basketball elements are existing, landscaping in place, social pavilion w/exterior bar-be-cue pits still in place and on site gardening still exists. As an additional benefit to the residence and an enhancement to the complex, to include the added front porches/patios and the new decorative block fence with the two entrance/exit gates, the entire exterior/interior of the complex structures are repainted, interior humidifiers are added to the units and the social pavilion is being updated.

4. RECOMMENDATION:

It is our position that the applicant’s continuing coordination with the permitting agencies, finds that the applicant is complying to the conditions imposed; have been and continues to work with the appropriate government entities in adhering to said Agencies requirements and ensuring that best management practices are in place. In line with the above we recommend a favorable Commission review of the request with the following condition;

1. That Applicant continues compliance to the Conditions as specified on the Notice of Action, dated October 14, 2011, filed under Document Number 828333.


Marvin Q. Aguilar

CASE PLANNER: F.P.TAITANO
Attachments: 10/13/11 & 10/22/15 Notice of Actions

File for Record is Instrument No. 828333

On the Year 11 Month 10 Day 26 Time 2:29
DE-OFFICIO

Recording No. _____ Receipt No. _____

(Space above for Recordation)

IMPORTANT NOTICE - READ CAREFULLY

"Pursuant to Section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLUC/GSPC project within one (1) year of the date of Recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire. This requirement shall not apply for application for Zone Change*."**

GUAM LAND USE COMMISSION

Department of Land Management
Government of Guam
P.O. Box 2950
Hagåtña, Guam 96932

NOTICE OF ACTION

October 14, 2011

Date

To: **Reliable Builders Inc.**
Represented Daniel D. Swavely
P.O. Box 7536
Tamuning, Guam 96931

Application No. 2000-12B

The Guam Land Use Commission, at its meeting on October 13, 2011.

 / Approved / Disapproved XX / Approved with Conditions

 / Tabled

Your request on Lot No. 5160-6-3, Harmon, Municipality of Tamuning for a:

NOTICE OF ACTION
Reliable Builders, Inc.
Represented by Daniel D. Swavely
Lot No. 5160-6-3, Harmon, Municipality of Tamuning
GLUC Meeting of October 13. 2011
Page 2 of 4

Application No. 2000-12B

ZONING

- / Zone Change***
- / Conditional Use
- / Zone Variance
 - Height Use
 - Density Other (Specify)
 - Setback
- / TENTATIVE DEVELOPMENT PLAN

SUBDIVISION

- / Tentative
- / Final
- / Extension of Time
- / PL 28-126, SECTION 1(A)

NOTE ON ZONE CHANGE

***Approval by the Guam Land Use Commission of a ZONE CHANGE DOES NOT CONSTITUTE FINAL APPROVAL but rather a recommendation to the Governor for his approval. Applicant shall be notified upon action taken by the Governor. [Reference 21 GCA (Real Property), Chapter 61(Zoning Law), Section 61634 (Decision by the Commission).]

SEASHORE

- / Wetland Permit
- / Seashore Clearance

HORIZONTAL PROPERTY REGIME

- / Preliminary
- / Final
- / Supplementary (Specify)

MISCELLANEOUS

- / Determination of Policy and/or Definitions
- / Other (Specify)

NOTICE OF ACTION
Reliable Builders, Inc.
Represented by Daniel D. Swavely
Lot No. 5160-6-3, Harmon, Municipality of Tamuning
GLUC Meeting of October 13, 2011
Page 3 of 4

Application No. 2000-12B

APPLICATION DESCRIPTION: The applicant, Reliable Builders, Inc., represented by Mr. Daniel D. Swavely is requesting approval of their Condition Use request to convert an existing 36-unit townhouse complex into a Temporary Workforce Housing Facility on Lot 5160-6-3, Harmon, Municipality of Tamuning.

COMMISSION DECISION: The Guam Land Use Commission **APPROVED** the applicants request subject to the following conditions;

1. That the applicant, adhere to the ARC conditions and requirements as stipulated on their official Position Statement; and
2. That when actual operations begin and a new and improved procedures and measures are implemented that these amendments must be incorporated and made a part of the Workforce Housing Facility Rules and Regulations document; and a copy be provided to Planning Division, Department of Land Management.
3. That this initial approval shall be for Twenty Four (24) Months and therefore shall be renewed annually (Per Section 2(4)(A) of Public Law 31-72); and
4. That there shall be no changes to the approved Conditional Use Permit unless subjected before the ARC review and GLUC approval; and
5. That the applicant present to the Guam Land Use Commission a 6 month status report. *Deleted*

out - see 10/19/2015 staff rpt. T. Lunt also re commission of the Harmon No. 5.

[Signature]
Marvin Q. Aguilar
Acting, Guam Chief Planner

10-14-2011
Date

[Signature]
Jay L. Lather
Chairman
Guam Land Use Commission

10-21-11
Date

Case Planner: Frank P. Taitano
Attachment(s): ARC Distribution List
Cc: Building Permits Section, DPW (Attn: Mr. Jesus Ninete)

NOTICE OF ACTION
Reliable Builders, Inc.
Represented by Daniel D. Swavely
Lot 5160-6-3, Harmon, Municipality of Tamuning
GLUC Meeting of October 13, 2011
Page 4 of 4

Application No. 2000-12B

CERTIFICATION OF UNDERSTANDING

I/We RELIABLE BUILDERS INC. / DANIEL D. SWAVELY
(Applicant [Please print name]) (Representative [Please print name])

Understand that pursuant to Section 5 of Executive Order 96-26, that a building or grading permit must be obtained for the approved GLUC/GSPC project within one (1) year of the date of recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire.

The Commission may grant two (2) one-year extensions of the above approval period at the time of initial approval.

This requirement shall not apply for application for a Zone Change***

I/We, further **AGREE** and **ACCEPT** the conditions above as a part of the Notice of Action and further **AGREE TO ANY AND ALL CONDITIONS** made a part of and attached to this Notice of Action as mandated by the approval from the Guam Land Use Commission or from the Guam Seashore Protection Commission.

 10/26/11
Signature of Applicant Date
 10/26/2011
Signature of Representative Date

ONE (1) COPY OF RECORDED NOTICE OF ACTION RECEIVED BY:

Applicant Date
 10/28/11
Representative Date

and of Guam. Government of Guam
Department of Land Management Office of the Recorder

387022

File for Record is Instrument No. _____

On the Year 15 Month 12 Day 22 Time 2:44

DE-OFFICIO

Recording Fee _____ Receipt No. _____

Deputy Recorder Jane Yamasaki
IANET YAMASAKI
(Space above for Recordation)

IMPORTANT NOTICE - READ CAREFULLY

“Pursuant to Section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLUC/GSPC project within one (1) year of the date of Recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire. This requirement shall not apply for application for Zone Change***.”

GUAM LAND USE COMMISSION

Department of Land Management
Government of Guam
P.O. Box 2950
Hagåtña, Guam 96932

COPY

NOTICE OF ACTION

October 23, 2015

Date

To: Reliable Builders Inc.
Represented by Daniel D. Swavely
P.O. Box 7536
Tamuning, Guam 96931

Application No. 2000-12B

The Guam Land Use Commission, at its meeting on October 22, 2015.

XX Approved ___/ Disapproved ___/ Tabled

Your request on Lot No. 5160-6-3, Harmon, Municipality of Tamuning for a:

NOTICE OF ACTION

Application No. 2000-12B

Reliable Builders, Inc.

Represented by Daniel D. Swavely

Lot No. 5160-6-3, Harmon, Municipality of Tamuning

GLUC Meeting of October 22, 2015

Page 2 of 4

ZONING

___/ Zone Change***

**XX/ Conditional Use (Second Annual
Renewal Pursuant to Section 61309(c),
Chapter 61, Title 21, GCA)**

___/ Zone Variance

[] Height

[] Use

[] Density

[] Other (Specify)

SUBDIVISION

___/ Tentative

___/ Final

___/ Extension of Time

___/ PL 28-126, SECTION
1(A)

NOTE ON ZONE CHANGE

*****Approval by the Guam Land Use Commission of a ZONE CHANGE DOES NOT CONSTITUTE FINAL APPROVAL but rather a recommendation to the Governor for his approval. Applicant shall be notified upon action taken by the Governor. [Reference 21 GCA (Real Property), Chapter 61(Zoning Law), Section 61634 (Decision by the Commission).]**

SEASHORE

___/ Wetland Permit

___/ Seashore Clearance

HORIZONTAL PROPERTY REGIME

___/ Preliminary

___/ Final

___/ Supplementary (Specify)

MISCELLANEOUS

___/ Determination of Policy and/or
Definitions

___/ Other

NOTICE OF ACTION

Application No. 2000-12B

Reliable Builders, Inc.

Represented by Daniel D. Swavely

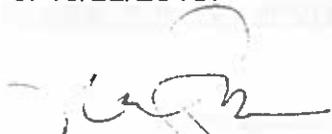
Lot No. 5160-6-3, Harmon, Municipality of Tamuning

GLUC Meeting of October 22, 2015

Page 3 of 4

APPLICATION DESCRIPTION: The applicant, Reliable Builders, Inc., Pursuant to Section 61309(c), Chapter 61, Title 21 GCA, submits its Second (2nd) annual renewal request of its Conditional Use Permit Approval for its Temporary Workforce Housing Facility (TWHF) on Lot 5160-6-3, Harmon, Municipality of Tamuning.

COMMISSION DECISION: The Guam Land Use Commission accepts the applicant's Second (2) annual report and approves the renewal of its Conditional Use Permit with the condition that the applicant continues to adhere to the conditions stated in the original NOA issued by the Commission, dated 10/14/2011 (Doc #828333) with the exception of condition no. 5 (6-month status report requirement) with an expiration date of one year from the date of recordation of the NOA issued by the GLUC at its meeting of 10/22/2015.



Marvin Q. Aguilar
Guam Chief Planner

10/23/15
Date



John Z. Arroyo
Acting Chairman
Guam Land Use Commission

12/18/15
Date

Case Planner: Frank P. Taitano

Cc: Building Permits Section, DPW

NOTICE OF ACTION
Reliable Builders, Inc.
Represented by Daniel D. Swavely
Lot 5160-6-3, Harmon, Municipality of Tamuning
GLUC Meeting of October 22, 2015
Page 4 of 4

Application No. 2000-12B

CERTIFICATION OF UNDERSTANDING

I/We _____, DANIEL D. SWAVELY
(Applicant [Please print name]) (Representative [Please print name])

Understand that pursuant to Section 5 of Executive Order 96-26, that a building or grading permit must be obtained for the approved GLUC/GSPC project within one (1) year of the date of recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire.

The Commission may grant two (2) one-year extensions of the above approval period at the time of initial approval.

This requirement shall not apply for application for a Zone Change***

I/We, further **AGREE** and **ACCEPT** the conditions above as a part of the Notice of Action and further **AGREE TO ANY AND ALL CONDITIONS** made a part of and attached to this Notice of Action as mandated by the approval from the Guam Land Use Commission or from the Guam Seashore Protection Commission.

Signature of Applicant Date

Daniel D. Swavely 12/17/15
Signature of Representative Date

ONE (1) COPY OF RECORDED NOTICE OF ACTION RECEIVED BY:

Applicant Date

Daniel D. Swavely 12/23/15
Representative Date

ATTACHMENT C



DIPĀTTAMENTON MINANEHAN TĀNO'
(Department of Land Management)
GUBETNAMENTON GUĀHAN
(Government of Guam)



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

Street Address:
590 S. Marine Corps Drive
Suite 733 ITC Building
Tamuning, GU 96913

Mailing Address:
P.O. Box 2950
Hagåtña, GU 96932

Website:
<http://land.guam.gov>

E-mail Address:
dldir@land.guam.gov

Telephone:
671-649-LAND (5263)

Facsimile:
671-649-5383

November 17, 2016

Memorandum

TO: Chairman, Guam Land Use Commission
FROM: Guam Chief Planner
SUBJECT: Commission Brief - Application No. 2015-29B
RE: Status report on conditions of approval

1. **PROLOGUE:**

At its regular meeting of April 28, 2016, the Guam Land Use Commission approved a height variance with conditions to Guam Wanfang Construction, Ltd. (represented by FC Benavente, Planners) to accommodate a two-tower, Multi-Family Dwelling development with building heights of up to 158' for one tower and 168' for the other.

Pursuant to Notice of Action issued by the Guam Land Use Commission (GLUC) dated May 3, 2016, as referenced in DLM Document No. 892368 and dated May 10, 2016), the applicants were required as noted in condition 4e, stating:

"within six months of recordation of approval the applicant shall submit re-design plans with supporting information as such design to the Guam Chief Planner for assessment of compliance. After review, such information shall be forwarded to the Guam Land Use Commission for its consideration and approval at the next available regularly scheduled hearing."

Additionally, condition 8c of the same Notice of Action requires that:

"From the date of recordation of approval, the applicant shall submit a written report every six (6) months to the GLUC on the status of the project with respect to associated phases of development to include a status of funding for the overall project."

2. **DISCUSSION and ANALYSIS:**

On November 14, 2016, the applicant submitted their six-month status report for the Pago Bay Marina Resort discussing on going work as well as a re-designed (architectural) plan for the Proposed Resort. The required 6-month deadline for this report was November 10th, 2016. The report was officially received on November 14, 2016. The new design narrative discusses the setbacks, building heights, dwelling units, parking and other activities including soil test boring, After review of the submitted plans and narrative discussion, we have identified certain potential issues that appear to be inconsistent with conditions as noted within this report.

We provide the following:

- a. There are inconsistencies between the number of dwelling units presented in the narrative (232 Units) versus the plan (235 units), and the potential for the number of units to increase up to 470 units since there are design features that allow for each unit having two (door) access points to ingress and egress to the common area walkways. Elimination of integration within a unit can occur by simply closing the door along the middle wall within a dwelling unit and creating two separate living spaces. At this time, we have no recourse but to defer to current building standards to interpret such a design, as such interpretation will have a direct impact on determining compliance with density requirements;
- b. We have discovered certain potential discrepancies within information provided for parking.
 1. Parking identified within the narrative report does not match the number of parking schematic design plan.
 2. Submitted parking plan does not appear to conform to the general requirements for parking pursuant to Title 21, Chapter 61 Section 61532. Parking designs appear smaller to perhaps accommodate maximum number of parking stalls required. As an example, we discovered certain stalls occurring at either 18feet by 9feet and/or 15feet by 8.5feet. The zoning code provides a minimum requirements provides for "every automobile parking space shall be of the following sizes:
 - i. Standard-sized automobile parking spaces shall be at least 19 feet by 8.5feet with parallel spaces at least twenty-two feet (22') in length; and
 - ii. Compact spaces shall be at least 16feet by 7.5 with parallel spaces at least nineteen feet (19') in length. Parking angles are at 90 degrees and therefore require 22 foot wide aisles width. However, this requirement does not occur in certain parts of the parking schematics. However, aisles widths may be decreased as stalls are subjected to more extreme angles (see Title 21GCA, Chapter 61, §61532(d)(3). Likewise, no ADA-compliant stalls have been identified.
 - iii. Certain stalls **do not** have aisles for egress or ingress.
- c. The report does not provide discussion on both the status of funding as a required reporting item in the submitted status report and the status of associated phases of development. Discussion on these items should be emphatic elements of the report, regardless of state of accomplishment or completion.

The initial approval of this project included six-month reporting schedules as the means to identify changes in the development scheme that in turn would articulate both adherence to conditions as noted in the issued NOA and the direction of development as intended by the Guam Land Use Commission. We emphasize that such changes must reflect, at best, minimum requirements relative to density and parking. Further, a completed assessment through proper due diligence rests in the applicant explaining plans and information, as submitted. With perhaps assistance from the Department of Public Works relative to design interpretations, we are otherwise of the opinion that

information and plans as provided in this 6-month status report violates the spirit and intent of requirements established in the issued Notice of Action in terms of:

- i. Failing to meet the required 6-month deadline;
- ii. Excluding the financial status of the project;
- iii. Density requirements appearing to have been exceeded; and
- iv. Not meeting parking requirements.

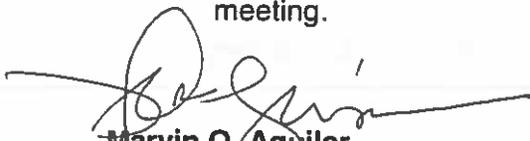
3. RECOMMENDATION:

The complexity of this project was enjoined by concerns generated by the Application Review Committee and the general public. As such, the Guam Land Use Commission found it only proper to exercise its authority and insist on some form of monitoring with particular focus on certain issues left remaining as a result of conditions placed on the initial approval. The report was intended to provide straight forward responses to effect clear articulation of conditions as imposed. Unfortunately, as a result of our findings we believe such intent was not achieved and therefore provide the following as *possible* course of action:

1. Revoke the approval for a height variance; or
2. Issue and serve a "Notice to Show Cause" (NSC) to the applicant. The NSC must include explanation and justification as why conditions *and intent of conditions* were not met.

If this action is selected, we then recommend the Chairman of the Guam Land Use Commission direct Planning Division to craft such document for Commission review at its next scheduled meeting. Time of order shall effectuate a response deadline of two weeks by the applicant to the Commission at the next available meeting from date issued and served; or

3. Reject the 6-month report dated November 14, 2016 with further clarification and direction by the Guam Land Use Commission to the applicant as to elements intended in such report. Upon issuance, the applicant shall provide an updated report two weeks from the November 29, 2016 scheduled GLUC meeting.



Marvin Q. Aguilar
Guam Chief Planner

Case Planner: Celine Cruz

Island of Guam, Government of Guam
Department of Land Management Officer of the Recorder

File for Record is Instrument No. 892368

On the Year 14 Month 05 Day 10 Time 2:18

Recording Fee DE-OFFICIO Receipt No. _____

Deputy Recorder JANE YAMASAKI
JANE T. YAMASAKI

(Space above for Recordation)

IMPORTANT NOTICE - READ CAREFULLY

"Pursuant to Section 5 of Executive Order 96-26, the applicant must apply for and receive a building or grading permit for the approved GLUC/GSPC project within one (1) year of the date of Recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire. This requirement shall not apply for application for Zone Change***."

GUAM LAND USE COMMISSION

Department of Land Management
Government of Guam
P.O. Box 2950
Hagåtña, Guam 96932

COPY

**AMENDED
NOTICE OF ACTION**

May 3, 2016

Date

To: Wanfang Construction Ltd.
c/o FC Benavente, Planners
127 Bejong Street, Barrigada, GU 96913

Application No. 2015-29B

The Guam Land Use Commission, at its meeting on April 28, 2016,

 / Approved / Disapproved XX / Approved with Conditions

 / Tabled

Your request on Lot 164-4NEW-1 in the municipality of Yona, for a zone variance for height to allow Commercial/common area height is not to exceed 58-foot mean sea level, Tower 1 not to exceed 168-foot mean sea level and Tower 2 not to exceed 158-foot mean sea level in an "R-2" (Multi-Family Residential) zone.

NOTICE OF ACTION

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance - Height

GLUC Hearing Date: April 28, 2016

Date of Preparation of NOA: May 3, 2016

Page 2 of 8

Application No. 2015-29B

ZONING

/ Zone Change***

/ Conditional Use

/ Zone Variance

Height

Use

Density

Other (Specify)

Side Yard

/ TENTATIVE DEVELOPMENT PLAN

SUBDIVISION

/ TENTATIVE

/ FINAL

/ EXTENSION OF TIME

/ PL 28-126, SECTION 1(A)

NOTE ON ZONE CHANGE

***Approval by the Guam Land Use Commission of a ZONE CHANGE DOES NOT CONSTITUTE FINAL APPROVAL but rather a recommendation to the Governor for his approval. Applicant shall be notified upon action taken by the Governor. [Reference 21 GCA (Real Property), Chapter 61(Zoning Law), Section 61634 (Decision by the Commission).]

SEASHORE

/ WETLAND PRMIT

/ SEASHORE CLEARANCE

HORIZONTAL PROPERTY REGIME

/ PRELIMINARY

/ FINAL

/ SUPPLEMENTARY (SPECIFY)

MISCELLANEOUS

/ DETERMINATION OF POLICY AND/OR DEFINITIONS

/ OTHER (SPECIFY)

NOTICE OF ACTION

Application No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance – Height

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APPLICATION DESCRIPTION: The Applicant, Wanfang Construction, Ltd requested to exceed the allowable structural height limitation of thirty (30) feet to construct the Pago Bay Marina Resort, a proposed 14 story and 15 story multi-family structure in an “R-2” (Multi-Family Residential) zone on Lot 164-4NEW-1 Municipality of Yona.

COMMISSION DECISION: The Guam Land Use Commission APPROVED WITH CONDITIONS the request for zone variance for height. Conditions are as follows:

1. Commission approves the height variance which is lower than what the applicant requested with the following restrictions:
 - a. Commercial/common area height is not to exceed 58-feet mean sea level;
 - b. Tower-1 not to exceed 168-feet mean sea level ;and
 - c. Tower 2 not to exceed 158-feet mean sea level).
2. Applicant adheres to all conditions listed below and as provided by the Application Review Committee. Such recommendations shall serve as conditions of approval under Condition 2 as follows:

Conditions as recommended by the Guam Environmental Protection Agency:

- a. The applicant must conduct a comprehensive soil analysis to determine percolation rate, taking into consideration the water table, to be used as a basis of design for a storm water management plan;
- b. Comply with the requirements of the 2006 Guam CNMI and Guam Storm Water Management Manual or current storm-water management plan and associated pre-treatment program, as directed by GWA.
- c. The sewer discharge must be contained in a holding tank and a pump station with a capacity of 24 hours to allow schedule of pumping by GWA during non-peak hours, as directed by GWA.
- d. The proposed discharge points must bypass the Pago Double Shaft Sewer Pump Station, as directed by GWA.
- e. Cleaning and maintenance of any swimming pool must not be discharged to the sewer system. It must be pumped by a private company and discharged at an acceptable location, as directed by GWA.
- f. The wastewater pump station requires a certified operator to operate for compliance with the 10 GCA Chapter 52, the “Water and Wastewater Operator’s Mandatory Certification Act”, as directed by GWA.
- g. Pumping of sewage to GWA’s gravity main must be scheduled during non-peak hours.
- h. The applicant must construct a water storage tank with a minimum capacity of 24 domestic demands and the required fire flow, as directed by GWA.
- i. The water point of connection must be before the Pago Bay Booster station to conserve energy, as directed by GWA.
- j. Non-potable water for landscape and other non-domestic use must be explored by collecting rainwater.
- k. With respect to wetland protection, wetland areas must be protected and a buffer of 30 feet must be maintained.
- l. The project must comply with all the requirements of Guam EPA regulations to be incorporated during the issuance of building permit clearance (i.e. Solid Waste Management Plan, Boring and Dewatering Permit, Air Emission permit, etc.).

NOTICE OF ACTION

Application No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance – Height

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Conditions of approval as recommended by the Guam WaterWorks Authority:

- a. **GWA recommends coordination with the GWA Engineering Department well in advance of the building permit application submittal. Discussions shall include the proposed project's impacts on existing water and sewer infrastructure and any required infrastructure improvements.**
- b. **Water service point of connection, connection details, water service line and meter size must be illustrated in the design drawings and approved by GWA.**
- c. **The water demand and sewer production calculations provided in the variance application do not specifically identify associated water uses, such as the pool and the water park. Utility calculations should identify all water demand activities and sewage sources, including restaurants and laundry facilities, if any.**
- d. **If water and sewer infrastructure are installed by the developer, they will require prior approval and shall be subject to inspection by GWA.**
- e. **The applicant shall install the water meters in the right of way or easement. If the developer will include a food preparation facility, then a grease trap shall be required. Backflow preventers are required for non-residential activities.**
- f. **New development is subject to water and/or sewer system development charges (SDC).**

Conditions of approval as recommended by the Guam Power Authority:

- a. **GPA has determined that significant infrastructure upgrades, that includes but is not limited to, switches, voltage regulators, load transfers and capacitor banks must be completed in order to support this project. GPA is also investigating the line extension of feeder P-211 to support the Pago Bay Marina Resort as a permanent solution. Consequently, the infrastructure upgrades, at a minimum of those referenced above, shall be completed prior to final service connection of Pago Bay Marina Resort.**
- b. **The applicant is required to comply with the following pursuant to the National Electric Code, National Electric Safety Code and GPA's Service Rules and Regulations:**
 - i. **Coordinate overhead/underground power requirements with GPA Engineering for new structures;**
 - ii. **Maintain minimum clearances as defined by the current edition of the National Electrical Safety Code and National Electrical Code;**
 - iii. **Maintain adequate clearance between any structures and electrical utility easements in accordance with NESC and GPA requirements.**
 - iv. **Developer/Owner shall provide necessary electrical utility easements to GPA prior to final connection.**
 - v. **Provide any revision to scheduling and magnitude of project power demand requirements for new loads.**
 - vi. **All relocation costs for GPA's facilities, if necessary, is 100% chargeable to the applicant including but not limited to labor and materials.**
 - vii. **Required system upgrades will be charged to the applicant. This includes relocation costs, new installation costs and all costs associated with modification of GPA facilities.**

NOTICE OF ACTIONApplication No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance – Height

GLUC Hearing Date: April 28, 2016

Date of Preparation of NOA: May 3, 2016

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- c. Primary distribution overhead and underground line extensions and GPA service connections must adhere to the guidelines outlined in the current issue of GPA's Service Rules and Regulations.
- d. Further system impact assessment may be required to determine the effect of this facility on GPA's existing power facilities.

Conditions of approval as recommended by the Department of Parks & Recreation:

- a. The developer must hire a qualified archaeologist to prepare an Archaeological Monitoring, Discovery, and Data Recovery Plan in consultation with our office. We recommend that Mr. Sana and Mr. Sherman schedule a meeting soon, with the appropriate DPR staff to discuss the concerns raised.
- b. Prior to any approval by the GLUC, the developer must secure an agreement with DPR to address and resolve the reburial of human remains and the public beach access to the ocean shore.

Conditions of approval as recommended by the Department of Public Works:

- a. Incorporate eco-green and energy efficient as part of your design concept.
- b. Provide structural analysis for winds velocity that can withstand 170 mph;
- c. Outdoor amenities including landscaping must be design in detail and make use of its physical and biological resources which will make a great impact to the environment;
- d. Must provide a soil report and geology engineering report;
- e. Must provide a traffic impact analysis to be coordinated with DPW, Division of Highways (Traffic Control Section); to include,
 - i. A request the widening of Route 4; and
 - ii. Creation of a turning lane south-bound into Yona.
- f. Parking layout, parking stalls (compact standard and accessible stalls) must comply with the American Disability Act (ADA) requirements;
- g. Entrance/exit must be wide enough for public access;
- h. Must provide public access to the beach area; and
- i. Provide solid waste compositions.
- j. DPW recommends approval subject to comments review by the Application Review Committee (ARC) with conditions that the complete set of design drawings must meet all the requirements in conformance with the latest building code edition applicable to civil, structural, architectural, mechanical, electrical, plumbing including flood zone and ADA requirements.

Conditions of approval as recommended by the Bureau of Statistics & Plans:

- a. Provide an open vegetated buffer between the shoreline and buildings in accordance with Policy NS-9 of the NCGLUP.
- b. Employ erosion and sediment controls during construction of the 239-unit building to ensure that sedimentation is avoided and the debris are not allowed to fall and flow into the water.
- c. Coordinated with the Guam Environmental Protection Agency (GEPa) for effective implementation of erosion control methods.
- d. Guam Wanfang, Construction Ltd. is advised to avoid clearing, grading and construction over the wetlands located in Lot 164-4NEW-1.

NOTICE OF ACTIONApplication No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona**Request for Variance – Height****GLUC Hearing Date: April 28, 2016****Date of Preparation of NOA: May 3, 2016****Page 6 of 8**

- e. Discharge of storm-water into the Pago River and Pago Bay should be avoided to the fullest extent practicable.
 - f. Submit a drainage plan showing methods or practices for managing storm-water on site implement best management practices on the property to control erosion and runoff during and after construction of the project in accordance with current storm-water management plan per DPW direction.
 - g. Consult with the Guam EPA for effective implementation of storm-water management practices.
 - h. The applicant is encouraged to implement Low-Impact Development (LID) practices such as permeable pavement for parking lots and walkways, grassed swales, island bio retention, and/or rain gardens into the landscaping design that will capture runoff from roofs, parking lots, or driveways, which filters pollutants before entering the water. An electronic file of the guidebook "Island Storm-water Practice Design Specifications" is available at the Bureau's, Guam Coastal Management Program office.
 - i. The applicant is encouraged to implement LID practices such as permeable pavement for parking lots and walkways, grassed swales, island bio retention, and/or rain gardens into the landscaping design that will capture runoff from roofs, parking lots, or driveways, which filters pollutants before entering the water.
 - j. Avoid the use of invasive plants is encouraged. Although the project identifies tropical landscaping on the property, the applicant is encouraged to incorporate native plants as well. The applicant is advised to preserve native vegetation on the property.
 - k. The applicant is encouraged to consult with Department of Agriculture in using organic fertilizers or pesticides for landscaping purposes to avoid additional contaminants from entering the Pago River and Pago Bay. The applicant may also seek guidance from Guam EPA regarding their Pesticide Control Program.
3. In matters remaining unresolved by individual agencies particularly that of matters concerning infrastructure, the applicant shall be restricted from submitting and/or securing any permit requests to include, not limited to, building permits until such time such agency concerns have been satisfied;
 4. The applicant shall complete and implement a re-design plan. Such new design shall:
 - a. Be based on maximum footprint consideration(s) available by law (239 units);
 - b. Best blend into the natural beauty of Pago Bay;
 - c. In its current design, the applicant attempts to promote a level view corridor serving reason for "two tower" design. The applicant shall resume or retain this intent to provide, as best as possible, a design that will not interfere with view corridors;
 - d. **SUCH DESIGN SHALL SERVE AS THE BASIS FOR IDENTIFYING APPROPRIATE HEIGHT LIMITATIONS; maximum height for the three structures – commercial building and common area the height is not to exceed 58-feet mean sea level, Tower 1 not to exceed 168-feet mean sea level and for Tower 2 not to exceed 158-feet mean sea level; and,**
 - e. Within six (6) months of recordation of approval the applicant shall submit re-design plans with supporting information of such design to the Guam Chief Planner for assessment of compliance. After review, such information shall be forwarded to the Guam Land Use Commission for its consideration and approval at the next available regularly scheduled hearing.

NOTICE OF ACTION

Application No. 2015-29B

Wanfang Construction, Ltd.

Lot 164-4NEW-1- Municipality of Yona

Request for Variance – Height

GLUC Hearing Date: April 28, 2016

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5. All commercial operations associated with the Pago Bay marine Resort intended to occur within or in association with the Territorial Seashore Reserve shall require consent and approval by the Guam Seashore Protection Commission;
6. Owners/operators of the Pago Bay Marina Resort shall engage the technical assistance expertise of the University of Guam in implementing beach/bay cleanup program; and partnered marine science education program;
7. Owners/operators of the Pago Bay Marina shall provide public access to the beach area of the bay. Such access shall allow for egress/ingress of emergency vehicles and public use of the Territorial Seashore Reserve throughout the bay pursuant to the requirements of providing untrammled use of the beach and its natural beauty pursuant to Title 21GCA, Chapter 61, Section 61617(e);
8. That prior to securing any permits for the purpose of construction, the applicant shall engage in crafting and securing an agreement between the applicant/property owner and the GLUC, where;
 - a. The purpose of agreement shall serve solely to assure the availability of funding for demolition of structures associated with this project in the event the developer fails to realize the project completion as a result of lack of funding;
 - b. The agreement shall contain and provide a timeline for projection completion;
 - c. From the date of recordation of approval, the applicant shall submit a written report every six (6) months to the GLUC on the status of the project with respect to associated phases of development to include a status of funding for the overall project;
 - d. Elements of agreement may include, but not limited to:
 - i. Bonding at 110% of the cost of the project;
 - ii. In the event that the Commission determines through substantial evidence the need, order and execute its authority vested in the agreement, the applicant may within a time period found to be reasonable by the Commission, appeal its decision citing appropriate reasonable justification to rescind such order;
 - iii. The applicant may request release of bonding and/or instruments of binding agreement at the time of projection completion and final occupancy is secured through the Department of Public Works.
9. Conditions of approval shall be transferable to new owners, when applicable.



 Marvin G. Aguilar
 Guam Chief Planner
 Department of Land Management

5/4/2016
 Date



 John Z. Arroyo
 Chairman
 Guam Land Use Commission

5/4/2016
 Date

Case Planner: Celine Cruz
 Attachment(s): ARC Distribution List

Cc: Building Permits Section, DPW (Attn: Mr. Joseph Guevara)
 Real Property Tax Division, Department of Revenue and Taxation

NOTICE OF ACTION
Wanfang Construction, Ltd.
Lot 164-4NEW-1- Municipality of Yona
Request for Variance - Height
GLUC Hearing Date: April 28, 2016
Date of Preparation of NOA: May 3, 2016
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Application No. 2015-29B

CERTIFICATION OF UNDERSTANDING

I/We _____ / Raymond Benitez FER
(Applicant [Please print name]) (Representative [Please print name])

Understand that pursuant to Section 5 of Executive Order 96-26, that a building or grading permit must be obtained for the approved GLUC/GSPC project within one (1) year of the date of recordation of this Notice of Action, otherwise, the approval of the project as granted by the Commission shall expire.

The Commission may grant two (2) one-year extensions of the above approval period at the time of initial approval.

This requirement shall not apply for application for a Zone Change***

I/We, further **AGREE** and **ACCEPT** the conditions above as a part of the Notice of Action and further **AGREE TO ANY AND ALL CONDITIONS** made a part of and attached to this Notice of Action as mandated by the approval from the Guam Land Use Commission or from the Guam Seashore Protection Commission.

Signature of Applicant Date

Raymond Benitez FER 5-10-16
Signature of Representative Date

ONE (1) COPY OF RECORDED NOTICE OF ACTION RECEIVED BY:

Applicant Date

RS 5-11-16
Representative Date

ACKNOWLEDGEMENT

Filed with the Department of Land Management on 5th day of MAY, 2016 in accordance with 21 Guam Code Annotated Section 61620.



MICHAEL JB BORJA
Director of Land Management
or Designee

ACKNOWLEDGEMENT

Filed with the Department of Public Works on 9th day of May, 2016 in accordance with 21 Guam Code Annotated Section 61620.



GLENN LEON GUERRERO
DIRECTOR OF PUBLIC WORKS
or Designee

A DECISION OF THE GLUC GRANTING A VARIANCE IS NOT FINAL UNTIL 15 WORKING DAYS AFTER FILING OF THE DECISION WITH DPW AND DLM. PERMITS SHALL NOT BE ISSUED TO THE APPLICANT BEFORE IT BECOMES FINAL. (21 GCA §61621)

**DECISION GRANTING VARIANCE
WITH FINDINGS**

[Pursuant to Title 21 GCA §61616 (a) through (h), (j) and (k)]

Guam Land Use Commission

WHEREAS, the following decision of the Guam Land Use Commission is made in accordance with 21 GCA §61616, §61617, and §61620, now therefore;

BE IT RESOLVED, that on the 28th day of April 2016, a hearing of the Guam Land Use Commission (GLUC) was held in accordance with notices duly issued to consider the application of Wanfang Construction, Ltd. for a Zone Variance for (Setback/Height/Density/Sign/Parking) on Lot 164-4NEW-1 in the Municipality of Yona.

A quorum of the Commission was present. In attendance were:

1. Mr. John Z. Arroyo, Chairperson
2. Mr. Victor Cruz, Vice-Chairman
3. Mrs. Beatrice P. Lintiaco, Member
4. Mr. Tae Oh, Member

Appearing before the Commission representing the applicant were:

1. Mr. Richard Sana (Planning Consultant)
2. Mr. John Sherman (Architecture & Engineering Consultant)

Also appearing and testifying on the above project was/were:

<u>See Attachment</u>	in favor / <u>against</u>
<u>See Attachment</u>	in favor / against

After considering all statements and testimony presented by interested parties GLUC finds that the application, for **ZONE VARIANCE for Height is GRANTED** on the following grounds: (Note : All five (5) sections should be answered)

- a. **THAT THE STRICT APPLICATION OF THE PROVISIONS OF TITLE 21, GCA, CHAPTER 61, RESULTS IN PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS INCONSISTENT WITH THE GENERAL PURPOSE AND INTENT OF THE LAW. THE FOLLOWING FACTS SUPPORT SUCH A FINDING:**

The applicant provides that the variance requested is for an increase in height and density¹. The applicant notes that north and west areas of the properties have setbacks in excess of 100' and 120' respectively; and which contributes immensely to increasing the open spaces on the property. The significant amount of property in

¹ The original variance request was two-fold as the applicant requested for both height and density variance. At the hearing date of April 28, 2016 the GLUC unanimously disapproved the request for a density variance, citing the lack of justification for such a request. The GLUC proceeded to approve with conditions that which was requested for a height variance.

wetlands (32%); coupled with the significant amount of lineal footage land, located within riverside and ocean shore frontage, places unique development constrain requirements on full use of the property; thus qualifying for a request for greater density. Ownership has worked diligently to prepare a design that works very well with the unique qualities of the property, providing adequate spaces for light and air, and preventing undue concentration of population, and assuring the adequate utilities and amenities are provided to support the project. Disallowing the height variance will result in difficulty and unnecessary hardship inconsistent with the general purpose, spirit and intent of the zoning law, which is the protection and promotion of the public health, safety and general welfare of the people of Guam. The GLUC further found where any consideration to recommend an allowance to exceed the height limitation was warranted only as recourse to protect nearby natural resources and sensitive habitat through avoidance. The statute covering density² allows the subject property 239 units. The placement of these units cannot follow standard or typical displacement throughout available land space due to development constraints that are driven by habitat and natural resource protection, as provided under current law.

b. THAT THERE ARE EXCEPTIONAL CIRCUMSTANCES OR CONDITIONS APPLICABLE TO THE PROPERTY INVOLVED OR TO THE INTENDED USE THEREFORE THAT DOES NOT APPLY GENERALLY TO OTHER PROPERTY IN THE SAME ZONE. THE FOLLOWING FACTS SUPPORT SUCH A FINDING:

The applicant submits the property is located in an area that encourages multi-family activity as displayed by the "R-2" zoning designation. A reasonable transition from a vacant unmanaged lot, to the Pago Bay Marina Resort twin tower multifamily building, housing a managed community which places a premium on the property's unique origin and its sensitive land features; and is dedicated to their protection, is an appropriate use of this property. The height and density variance allows for reasonable use of the property while complying with the existing zoning requirements. These circumstances do not apply to other properties in the same area. Again, the GLUC further found where any consideration to recommend an allowance to exceed the height limitation was warranted only as recourse to protect nearby natural resources and sensitive habitat through avoidance. The statute covering density³ allows the subject property 239 units. The placement of these units cannot follow standard or typical displacement throughout available land space due to development constraints that are driven by habitat and natural resource protection, as provided under current law.

² See Title 21GCA, Chapter 61, Article 5, Sub-Article 5, Section 61502.

³ See Title 21GCA, Chapter 61, Article 5, Sub-Article 5, Section 61502.

- c. **THAT THE GRANT OF VARIANCE WOULD NOT BE MATERIALLY DETRIMENTAL TO THE PUBLIC WELFARE, OR INJURIOUS TO THE PROPERTY OR IMPROVEMENTS IN THE ZONE OR NEIGHBORHOOD IN WHICH THE PROPERTY IS LOCATED. THE FOLLOWING FACTS SUPPORT SUCH A FINDING:**

The GLUC found that implementing a design that restricts lateral development to a more restricted footprint compliments the general objective of promoting public health, safety and welfare by allowing more open space to displace flooding due to the effects of storm surges and committing the first few stories to commercial and not residential-occupancy use. As the property exists at near sea level and in close proximity to submerged areas, the GCP was confident the applicant will be required to meet certain flood elevation standards.

In analyzing structural elevations, that the first 30 feet of the structure will incorporate non-residential occupancy such as a sub-ground parking garage program, open space parking and recreational space at the baseline level, and commercial space on the first two floors. This design appears logical and sensible as a means to ultimately protect human life from hazards of flooding, storms, and possible tsunami.

- d. **THAT THE GRANT OF SUCH VARIANCE WILL NOT BE CONTRARY TO THE OBJECTIVES OF ANY PART OF THE MASTER PLAN ADOPTED BY THE COMMISSION OR LEGISLATURE:**

The applicant submits that the "Guam Master Plan" as shown in the zoning map allows the location of multifamily uses in the "R-2" zone. This request is in reasonable accordance with and not contrary to the plan.

- e. **THAT AS TO VARIANCES FROM THE RESTRICTIONS OF TITLE 21, GCA SECTION 61504, THE PROPOSED BUILDING WILL SUBSTANTIALLY ENHANCE THE RECREATIONAL, AESTHETIC, OR COMMERCIAL VALUE OF THE BEACH AREA UPON WHICH THE BUILDING IS TO BE CONSTRUCTED, AND THAT SUCH BUILDING WILL NOT INTERFERE WITH OR ADVERSELY AFFECT THE SURROUNDING PROPERTY OWNERS' OR THE PUBLIC'S RIGHT TO AN UNTRAMMELED USE OF THE BEACH AND ITS NATURAL BEAUTY. FACTS WHICH SUPPORT THIS CONCLUSION ARE AS FOLLOWS:**

The applicant submits that the proposed building will substantially enhance the recreational, aesthetic, and commercial value of the beach area. Subsequent development of the property may be anticipated. However, plans will not interfere with or adversely affect the surrounding property owner's or public's rights to untrammled use of the beach and its natural beauty. Likewise, as part of the

Decision Granting Variance with Findings
Ref: Application No. 2015-29B
Page 4

conditions associated with the issued Notice of Action, the applicant is required to provide appropriate access for the public and emergency vehicles to beach area resources.

The members of the commission, after due consideration, voted to approve the request for a height variance by granting such request with conditions.

The vote of the members is as follows:

4 Ayes 0 Nays 0 Abstentions

This decision was adopted the 28th day of April, 2016 and shall be filed with the Department of Land Management and the Department of Public Works as mandated under Title 21, GCA, Section 61616 to 61617 and 61501.



John Z. Arroyo
Chairman, Guam Land Use Commission

EXHIBIT 1

DIPĀTTAMENTON MINANEHAN TĀNO'
(Department of Land Management)
GUBETNAMENTON GUĀHAN
(Government of Guam)



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

MICHAEL J.B. BORJA
Director

DAVID V. CAMACHO
Deputy Director

Street Address:
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P.O. Box 2950
Hagåtña, GU 96932

Website:
<http://dlm.guam.gov>

E-mail Address:
dmdir@land.guam.gov

Telephone:
671-649-LAND (5263)

Facsimile:
671-649-5383

November 10, 2016

Wangfang Construction Ltd.
c/o FC Benavente Planners
127 Bejong Street, Barrigada, GU 96913

RE: Conditions of approval for Guam Land Use Commission Application 2015-29B

Buenas yan Hafa Adai:

Pursuant to Notice of Action issued by the Guam Land Use Commission (GLUC) dated May 3, 2016, reference to Instrument Number 892368 dated May 10, 2016, you were required as noted in condition 4e that "within six months of recordation of approval the applicant shall submit re-design plans with supporting information as such design to the Guam Chief Planner for assessment of compliance. After review, such information shall be forwarded to the Guam Land Use Commission for its consideration and approval at the next available regularly scheduled hearing."

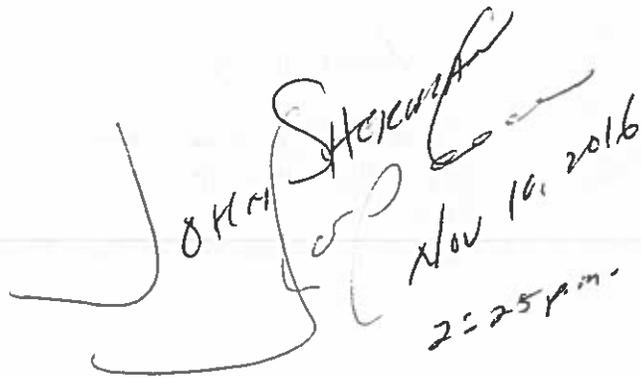
Additionally, condition 8c of the same Notice of Action requires that "from the date of recordation of approval, the applicant shall submit a written report every six (6) months to the GLUC on the status of funding for the overall project."

As such, we have placed this application item on the GLUC Agenda to be reviewed by the Commission at its meeting on November 29, 2016 at 1:30 PM. To date, we have not received such a report. Please submit to the Guam Chief Planner the report to comply with the noted conditions above.

Senseramente,


MICHAEL J. B. BORJA
Director


FPT/CC


Nov 10, 2016
2:25 PM



AES CONSTRUCTION INC.

1270 North Marine Corp Drive, Suite 101-236
Tamuning, Guam 96913

TEL: (671) 649-6321

November 10, 2016

Department of Land Management
Government of Guam
ITC Building Suite 733
590 S. Marine Corps Drive Suite 733
Tamuning, Guam 96913

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[Handwritten signature]

11-10-16

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NOV 19 2016

Department of Land Management
Time 4:10 PM

MB 11/10

Subject: Conditions of GLUC Approval, Application No. 2015-29B
Lot 164-4NEW-1, Municipality of Yona
Pago Bay, Yona, Guam

Attention: Mr. Michael Borja,
Director

Dear Mr. Borja,

Thank you for your reminder letter in regard to the subject matter. In compliance with condition 4e of our Recorded NOA, we will be submitting our revised project data packet on November 14, 2016.

On behalf of our client, our project planning consultant Mr. Richard Sana of FC Benavente Planners will be appearing before the Commission on November 29, 2016 as scheduled. In addition to our project data packet, Mr. Sana will be making our oral presentation of the project status.

Thank you again for your letter and please contact the undersigned if there are any questions.

Sincerely,

AES CONSTRUCTION, INC.

[Handwritten signature]
JOHN K. SHERMAN, PE

President

(Authorized Representative of Wangfang Construction Ltd.)

RECEIVED

11/14/2016 Planning
R

FC BENAVENTE, PLANNERS

Planning, Zoning, Land Development Consulting, Permitting

127 Bejong Street, Barrigada, GU 96913
Tel: 671.687.9865 richardjsana@yahoo.com

November 14, 2016

Michael Borja, Executive Secretary
Guam Land Use Commission
Department of Land Management
P.O. Box 2950
Hagatna, Guam 96932

Subject: Six Month Status Report for the Pago Bay Marina Resort, Application No. 2015-29B.

Hafa Adai Mr. Borja,

In accordance with the Notice of Action (NOA) for the above application recorded on May 10, 2016, we submit the attached status report highlighting on-going and pending activities involving the Pago Bay Marina Resort project. Condition Number 8.c. stipulates: From the date of recordation of approval, the applicant shall submit a written report every six months to the GLUC on the status of the project with respect to associated phases of development to include a status of funding for the overall project. Therefore, we humbly request the opportunity to present this report before the GLUC at the earliest date.

Si Yu'os Ma'ase,



Richard J. Sana
A Duly Authorized Representative

STATUS REPORT

PAGO BAY MARINA RESORT, APPLICATION NO. 2015-29B

ON-GOING WORK

1. Building Redesign (architectural), to comply with the GLUC imposed height limitation for building tower 1(12 stories) and tower 2 (11 stories) not exceed 168 feet and 158 feet respectively. The original design proposes two towers at 15 stories and 14 stories to accommodate 304 residential units.

New Design:

1. Setback –
 - a. Wetland boundary to building – minimum 35 feet
 - b. Route 4 edge of R/W to building – minimum 40 feet
 - c. Mean high water mark (MHW) to building – minimum 99 feet

2. Building Height –
 - a. Building A – approved for 12 stories, 168 feet.
New design – 11 stories, 158 feet.
 - b. Building B – approved for 11 stories, 158 feet.
New design – 10 stories, 148 feet.
 - c. Approved commercial/common area – proposed height of 58 feet.
New design – 48 feet.

3. Proposed no. of dwelling units approved = 239 du
New design = 232 du.

4. Parking –

A total of 328 parking stalls proposed.

 - a. Basement Parking Level 1 – 138 stalls + 8 ADA
 - b. Basement Parking Level 2 – 147 stalls + 8 ADA
 - c. On-site – 27 + 1 bus stall

Other activities includes soil test boring for soil evaluation and percolation and other elements in the soil profile prior to construction. All field work are complete except the percolation test.

Mr. John Sherman met recently with the Army Corp of Engineers (ACOE) Representative to discuss possible impacts to the wetland located on the property. After reviewing the site plan, she found no issues working anywhere near the area of particular concern. She was comfortable with the site plan and offered assistance if needed on other issues. Mr. Sherman will be meeting with Ms. Anna Simeon, the Coral Reef Watershed Coordinator from BSP GovGuam to discuss developing an eco-friendly shoreline with available approved methods. In addition, the project's architect Barbara Burkhart will be meeting with Guam's Archaeologist John Mark Joseph to close out the issue of the reburial of recovered ancestral remains found near the project site.

On the design process, the schematic design was completed on October 24, 2016. The project is proceeding cautiously due to the on-going court cases. The application for a clearing and grading permit will proceed by January 2017.

Any new information and updates will be provided as they became available.